AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. [illegible] 6.

C. G. BLAKE, ROGERS, BROWN & COMPANY, AND THE HULL COAL AND COKE COMPANY, PLAINTIFFS IN ERROR,

vs.

CALVIN M. McCLUNG, WILLIAM P. SMITH, WILLIAM B. KEESEE, FRANKLIN H. McCLUNG, Jr., AND CHARLES J. McCLUNG, Jr., PARTNERS AS C. M. McCLUNG & COMPANY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

RECORD FILED JANUARY 13, 1908.
AGREEMENT FILED JUNE 14, 1907.

(16,141.)

(16,141.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 101.

C. G. BLAKE, ROGERS, BROWN & COMPANY, AND THE HULL COAL AND COKE COMPANY, PLAINTIFFS IN ERROR,

vs.

CALVIN M. McCLUNG, WILLIAM P. SMITH, WILLIAM B. KEENER, FRANKLIN H. McCLUNG, JR., AND CHARLES J. McCLUNG, JR., PARTNERS AS C. M. McCLUNG & COMPANY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 14, 1897.

In the Supreme Court of the United States, under Writs of Error to the Supreme Court of Tennessee.

CHARLES GROVERMAN BLAKE *et al.*
vs.
CALVIN M. MCCLUNG *et al.*

Stipulation of Counsel in Respect to the Portions of the Record to be Printed.

The parties appellant and defendant, by their respective solicitors, agree that the following parts of the record shall be printed, and none other; which printed parts, together with the stipulation of the parties contained in this agreement, shall be submitted as the record of the cause:

I.

The Embreeville Freehold Land, Iron & Railway Company, Ltd., is an alien corporation, organized for mining and manufacturing purposes, incorporated under the laws of the Kingdom of Great Britain and Ireland, and had prior to the filing of the original bill, to wit, in 1890, the date at which it began business in Tennessee, registered its charter in Tennessee under the provisions of the act of the General Assembly of Tennessee passed March 19, 1877, approved March 21, 1877, chapter 31, page 44, Acts of Assembly, session of 1877. Said Embreville Company purchased and held an estate and did a mining and manufacturing business and established a manager's office in Tennessee, and transacted its business affairs in America at and from said office, in compliance with the provisions of said act of 1877, chapter 31, declaring the terms upon which such corporations were permitted to carry on business in Tennessee, and to purchase, hold, and convey real and personal property in that State.

II.

On June 20, 1893, C. M. McClung & Company and others filed an original general creditors' bill in the chancery court of Washington county, Tennessee, against said Embreville Company and others, alleging the insolvency of said company, its default in the meeting and discharge of its current obligations, that it had made conveyance in trust of part of its personal property in fraud of the rights of its other creditors, and seeking the appointment of a receiver and the administration of the affairs of said corporation as an insolvent corporation, pursuant to the Tennessee statutes governing such cases. Said chancery court took jurisdiction of said corporation, sustained and maintained said bill as a general creditors' bill, and appointed a receiver of its property in Tennessee, and administered its affairs in said State and passed decrees adjudicating the rights and priorities of creditors.

No question is made in respect to the amount due to any one of the creditors, and this controversy is between creditors because of the preference given under certain Tennessee statutes. The cred-

itors who recovered judgments in the decree of the chancery court of Washington county were complainants in the original bill and petitioners in said cause by independent petitions filed, and the amounts in said decree set forth were severally due them.

The residences of said petitioners are correctly set forth in said decree. Said company maintained its home office in London, its managing director resided there, and after this bill was filed liquidation under the companies' acts of Great Britain was there ordered and begun.

III.

It is furthermore stipulated that there are holders of debentures executed by the Embreeville Freehold Land, Iron & Railway Company, Ltd., whose claims are not specifically adjudicated in said decree.

The original debenture issue amounted to $500,000.00, and another issue, subsequent in time, but claimed prior in right, amounted to $125,000.00. All of the holders of said issues are non-residents of Tennessee and of the United States of America.

There was also a general trade indebtedness, aggregating about $90,000.00, due by the said company to residents of Great Britain, and whose claims were specifically adjudicated in said decree.

IV.

Publication was made, requiring all persons claiming to be creditors of said corporation to intervene in said chancery court and set up their claims against said company.

Upon the basis of this stipulation, it is agreed that only the following parts of the record, which is all of the record that is essential to the determination of the issues raised in this court by the assignments of error, shall be printed, to wit:

1st. The original bill as it appears. (See Tr., vol. 1, p. 1.)

2nd. The amended & supplemental bill of complainants as it appears. (See Tr., vol. 2, p. 51.)

3rd. The answer of defendants as same appears. (See Tr., vol. 1, p. 20.)

4th. The joint petition of Charles Groverman Blake and Rogers, Brown & Co., who are and were non-residents of the State of Tennessee, filed November 9th, 1893. (See Tr., vol. 3, p. 69.)

5th. The petition of the Hull Coal & Coke Company, which is and was a corporation under the laws of Virginia, non-residents of Tennessee, filed April 24th, 1894. (See Tr., vol. 3, p. 202.)

6th. Petition London Trust Company. (See Tr., vol. 4, p. 155.)

7th. Petition Clark, Reid & Clark, trustees. (See Tr., vol. 4, p. 138.)

8th. The order of court allowing the above petitions to be amended. (See Tr., vol. 4, p. 40.)

9th. The opinion of the chancellor of the chancery court of Washington county, Tennessee, and the decree pronounced thereon. (See Tr., vol. 6, p. 181.)

10th. The stipulation of counsel waiving the raising of the question of the constitutionality of the act of Tennessee, 1877, chapter 31

on the point of preference granted to Tennessee creditors. (See Tr., vol. —, p. —.)

11th. The findings & opinion of the court of chancery appeals of Tennessee and the decree based thereon. (See Tr., vol. 6, p. 26.)

12th. The assignments of error filed in the supreme court of Tennessee by C. G. Blake, Rogers, Brown & Company, and the Hull Coal & Coke Company, and all other assignments of error filed in the cause in the supreme court of Tennessee, and the answers to the assignments of error. (See Tr., vol. 6, p. 296.)

13th. The decree of the supreme court of Tennessee. (See Tr., vol. 6, p. 286.)

14th. Notice to join in application for writs of error. (See Tr., vol. 6, p. 290.)

15th. Copy of the citation served on complainants, defendants, petitioners, and all other parties, and a copy of the several acceptances of service or services. (See Tr., vol. 6, p. 301.)

16th. The order of severance, bond, and writ of error. (See Tr., vol. 6, p. 298.)

HENRY H. INGERSOLL,
Counsel for Clarke, Reid & Clarke, Trustees.
SAM'L G. SHIELDS,
Sol. for Complainants.
CHARLES SEYMOUR,
Sol. for London Trust Co.
SAM'L C. WILLIAMS,
For Petitioners.

Cited and represented by me—

TULLY R. CORNICK,
Solicitor for Appellants.

[Endorsed:] Case No. 16141. Supreme Court U. S., October term, 1897. Term No., 101. C. G. Blake *et al.*, plaintiffs in error, *vs.* Calvin M. McClung *et al.* Stipulation in respect to the portions of the record to be printed. Filed June 14, 1897.

Original and Injunction Bill.

To the Honorable John P. Smith, chancellor for the first chancery division of the State of Tennessee, sitting in chancery for the district composed of the county of Washington:

The bill of complaint of C. M. McClung, W. P. Smith, W. B. Keener, F. H. McClung, Jr., and C. J. McClung, Jr., partners trading and doing business under the firm name and style of "C. M. McClung & Company;" J. D. Cowan, C. J. McClung, Matt McClung, Jacob K. Thomas, and R. M. Rhea, partners trading and doing business under the firm name and style of "Cowan, McClung & Company;" W. B. Lockett, A. P. Lockett, and Ed. Lockett, partners trading and doing business under the firm name and style of "W. B. Lockett Company;" R. S. Hazen and J. O. Lotspeich, partners trading and doing business under the firm name and style of "Hazen & Lotspeich," all citizens of Knox

county, Tennessee, and The Knoxville Provision & Sugar Company, a corporation organized under the laws of the State of Tennessee, with its office at Knoxville, Tennessee; all of the other creditors of the Embreeville Freehold Land, Iron & Railway Company who will come in and have themselves made parties to the suit, complainants, filed against the Embreeville Freehold Land, Iron & Railway Company (Limited), a foreign corporation organized under the laws of Great Britain, but which has been domesticated under the laws of the State of Tennessee and has an office in Washington county, Tennessee; The Dent Mining Company, a corporation organized under the laws of Tennessee; Dosser Brothers, a firm composed of R. N. Dosser, A. T. Dosser, and F. F. Dosser; Garber Bros, a firm composed of W. M. Garber and J. A. Garber; Blair Bros., a firm composed of —— Blair and —— Blair; D. Accemose, W. J. Love, Collin C. Wilson, residents of Washington county, Tennessee; The First National Bank of Johnson City, Tennessee, a corporation organized under the banking laws of the United States, with its office in Washington county, Tennessee; The Jonesboro Banking & Trust Company, a corporation organized under the laws of the State of Tennessee, with its office in Washington county, Tennessee, and S. J. Kirkpatrick, citizen of said Washington county, and The Pioneer Coal & Coke Company, a corporation under the laws of Virginia, defendants.

I.

Humbling complaining, your orators, C. M. McClung & Co., show unto your honor and charge that the defendant The Embreeville Freehold Land, Iron & Railway Company (Limited) is justly indebted to them by open account in the sum of $1,919.14 for goods, wares, and merchandise sold and delivered to it by your orators at its request. The said defendant purchased the sum of $1,716.54 of said goods from your orators under the name of the Embreeville Iron Works, and they purchased the balance of said goods in the name of "F. Devault, agent." The said F. Devault was the agent of the said Embreeville Freehold Land, Iron & Railway Company and run the commissary for said company; $1,527.16 of said indebtedness is long past due.

Certified statements of said accounts are herewith filed, marked Exhibits "A" & "B," and are prayed to be taken as a part of this bill, and need not be copied in the issuance of process.

Your orators, Cowan, McClung & Company, show unto your honor and charge that the defendant The Embreeville Freehold Land, Iron & Railway Company is justly indebted to them by account for goods, wares, and merchandise sold and delivered to it by your orators, at its request, in the sum of $1,394.64, of which amount the sum of $977.60 is long past due, and the whole of said sum is entirely unpaid.

A certified statement of said account is herewith filed, marked Exhibit "C," and is prayed to be taken as a part of the bill, but need not be copied in the issuance of process.

Your orators, W. B. Lockett & Company, shows unto your honor and charge that the defendant The Embreeville Freehold Land, Iron & Railway Company is justly indebted to them by account for goods, wares, and merchandise sold and delivered to it by your orators, at its request, in the sum of $2,002.09, and the sum of $1,626.34 of said indebtedness is now long past due. The said defendant purchased said goods from your orators under the name of "F. Devault, agent," who was the agent of said defendant, as aforesaid.

A certified statement of said account is herewith filed, marked Exhibit "D," and is prayed to be taken as part of this bill, but it need not be copied in the issuance of process.

Your orators, Hazen & Lotspeich, show unto your honor and charge that the defendant The Embreeville Freehold Land, Iron and Railway Company is justly indebted to them by account for goods, wares, and merchandise sold and delivered to it by your orators, at its request, and $102.27 of said indebtedness is long past due, and all the same is entirely unpaid.

A certified statement of said account is herewith filed, marked Exhibit "E," and is prayed to be taken as part of this bill, but need not be copied in the issuance of process.

Your orator, The Knoxville Provision & Sugar Co., shows unto your honor and charges that the defendant The Embreeville Freehold Land, Iron & Railway Company is justly indebted to it by account in the sum of $955.55 for goods, wares, and merchandise sold and delivered to the said defendant by your orator, at its request, and all of said indebtedness is entirely unpaid.

A certified statement of said account is herewith filed, marked Exhibit "F," and is prayed to be taken as a part of this bill, but need not be copied in the issuance of process.

All of said Exhibits "A," "B," "C," "D," "E," & "F" are filed with this bill and sued upon as accounts coming from a county other than that of Washington county, in the State of Tennessee, and are prayed to be taken as evidence of said indebtedness in this cause.

II.

Your orators further show unto your honor that the Embreeville Freehold Land, Iron & Railway Company (Limited) is the owner of and has been operating an iron furnace situate at Embreeville, in the 6th civil district of Washington county, Tennessee. In operating said business it was necessary for the Embreeville Freehold Land, Iron & Railway Company to purchase a great many supplies and a great many goods, wares, and merchandise for its commissary, out of which it paid its hands, and it run said commissary for its own convenience in the name of "F. D. Devault, agent," and purchased goods in his name, and the claims hereinbefore set out were debts made by the defendant for goods which it purchased from them for its commissary and to be used in the operation of its business.

III.

Your orators further show unto your honor that the defendant The Embreeville Freehold Land, Iron & Railway Company is the owner of the following-described tract of land lying and being in the 1st, 4th, & 6th civil districts of Washington county and in the 1st and 7th civil districts of Unico Co., Tennessee, to wit:

"A certain tract or parcel of land lying and being in the counties of Washington, Unicoi, & Greene, in the State of Tennessee, known as the Embreeville Iron Works lands, which lands extend westwardly from Embreeville, in Washington county, to the old Greene county line, easterly to the Carter county line, and southerly to the North Carolina State line, and containing about 47,000 acres of land, be the same more or less." The said iron furnace is situated on this land, at Embreville, Tennessee.

The said Embreeville Freehold Land, Iron & Railway Company is also the owner of a large lot of personal property, consisting of pig iron, scrap iron, iron ore, coke limestone, coke barrows, sawed lumber, horses, mules, two stocks of goods, wares, and merchandise, and other personal property, all of which is situated at Embreville, in Washington county, Tennessee.

IV.

Your orators further show unto your honor and charge that on June 15th, 1893, a deed of trust was executed in the name of the Embreeville Freehold Land, Iron & Railway Co., whereby all of its said personal property of every kind, character, and description was transferred and conveyed to secure certain claims due to the hands of the said defendant and certain claims alleged to be due to the Dent Mining Company, Dosser Brothers, Garber Brothers, Blair Brothers, D. Acdemosa, Jonesboro Banking & Trust Company, The First National Bank of Johnson City, Wm. J. Love, Collin C. Wilson, and the Pioneer Coal & Coke Company, all of which property is fully described in said deed of trust and the amounts of the alleged indebtedness *is* specifically set out therein.

A certified copy of said instrument is herewith filed, marked "Exhibit G," and is prayed to be taken and read as a part of this bill, but need not be copied in the issuance of process.

From an inspection of said instrument you honor will see that it was executed in the name of the "Embreeville Freehold Land, Iron & Railway Company by Wm. J. Love, general manager," and, as above shown, said instrument covers all of the personal property of the said defendant, including the fuel and material that it had on hands with which to operate and carry on its business, and all of said property is by the terms of said instrument immediately turned over to said trustee and he has taken possession of the same. By this act the said defendant has made it impossible for it to continue to operate its furnace, and your orators are informed, believe, and charge that the same is closed down and all of its business has been suspended.

Your orators are informed, believe, and charge that said Wm. J. Love was not legally authorized to make and execute said instrument, and they charge that said deed of trust is not legally and properly executed, and that the same is utterly null and void.

Your orators are informed, believe, and charge that said deed of trust was made and executed for the express purpose of hindering and delaying your orators and the other creditors of the said Embreville Freehold Land, Iron & Railway Company in the collection of their debts, and that the same is fraudulent and void. The said defendant, The Embreeville Freehold Land, Iron & Railway Company, is largely indebted to a great number of persons whose names and residences are unknown to your orators, and much of which indebtedness is long past due and the said defendant was being pressed to pay the same, which it was entirely unable to do, and your orators charge that said instrument, while it purports on its face to have been made for the purpose of acquiring certain favored creditors of the said defendant, was in fact made for the purpose of hindering and delaying creditors of said defendant in the collection of their debts and in the fraudulent attempt to give the said Wm. J. Love, who executed said instrument in the name of said company, and certain other creditors therein the right of priority of payment out of the assets of the said Embreeville Freehold Land, Iron & Railway Company, which, as your orators are informed, believe, and charge, was at the time said instrument was executed an insolvent corporation.

V.

Your orators are informed, believe, and charge that the said defendant, The Embreeville Freehold Land, Iron & Railway Company, is entirely unable to meet and pay off its current indebtedness, which is now being pressed for collection; that it has committed many acts of insolvency by allowing its paper to become past due and refusing to pay the same; that it is in such financial straits that it is unable to procure material and supplies to continue its said business; that the execution of its said deed of trust was a positive act of insolvency, and was an attempt to put its personal property beyond the reach of its creditors and to fraudulently hinder and delay them in the collection of their debts; that, while its nominal assets are large, if the same were sold for the purpose of winding up said concern and paying off its indebtedness, there would not be sufficient for that purpose, and consequently that said Embreeville Freehold Land, Iron & Railway Company is insolvent.

VI.

Your orators are informed, believe, and charge that the said corporation, because of its financial embarrassment, is unable to procure coal and other supplies to continue the operation of its business, and that it is insolvent, and the execution of said deed of trust is a fraudulent attempt upon the part of the said Wm. J. Love to prefer the creditors whose claims are pretended to be secured thereby, includ-

ing the individual claim of the said Love, which is mentioned therein, in the payment of their debts in exclusion and fraud of the rights of the other unsecured creditors of said insolvent corporation.

Your orators are informed, believe, and charge that said company is indebted to some of its officers and stockholders and others, who are citizens and residents of the Kingdom of Great Britain, in various sums on account of monies advanced by them, and they charge that unless the said company is enjoined from further encumbering its properties that it will attempt to favor said class of creditors by executing other mortgages upon its property for their security in fraud of the rights of your orators and the other unsecured creditors of said insolvent corporation. Your orators have no security whatever for their said debts, and they charge if said attempt to give priority to the claims of those creditors whose names are set out in said deed of trust is successful and the said company is allowed to go forward and favor other of its individual creditors, to the exclusion of your orators and other less favored creditors, that they will lose all of their said debts and be entirely without remedy, either in law or equity.

Your orators are advised that the assets of said insolvent corporation *is* a trust fund for the payment of all its creditors, equally and ratably, except that the local creditors or those living in the State of Tennessee have priority, and that its said officers have no right to favor any class of creditors to the prejudice of the rights of your orators by giving them liens upon said property, and that such attempt is fraudulent and utterly void and will be so declared and set aside by this honorable court.

Your orators are advised that said deed of trust is fraudulent and utterly void for the following reasons:

1st. Because the said Wm. J. Love had no legal right or authority to execute a deed of trust on the property of said company.

2nd. Because said deed of trust was made for the fraudulent purpose of hindering and delaying the creditors of said company in the collecting of their just debts.

3rd. Because at the time said deed of trust was executed the said Embreeville Freehold Land, Iron & Railway Company was unable to meet its current indebtedness and was insolvent, and its property had become a trust fund for the payment of all its creditors ratably, and the attempt made by the said W. J. Love to secure himself and others creditors of said company was fraudulent and illegal.

Your orators are advised that they have the right to have said deed of trust set aside on the grounds hereinbefore set out, and to have the same declared to be null and void, and to have the Embreeville Freehold Land, Iron & Railway Company declared to be an insolvent corporation, and to have a receiver appointed to take charge of all its property, and to have the same sold and distributed between all the just creditors of said company.

Your orators are advised that they have the right and they come and file this bill as a general creditors' bill for the benefit of themselves and all the other creditors of the Embreeville Freehold Land,

Iron & Railway Company, and to have their rights and priorities declared; to have the said defendant wound up as an insolvent corporation and its assets distributed ratably among all of its creditors under the law governing the distribution of the assets of an insolvent corporation.

The premises considered, your orators pray that those named as such in the caption hereof be made parties defendant to this bill by due process and apt words and by publication, and be required to answer the same fully and particularly, but not on oath, their oaths being here- waived; that they have decreed in this honorable court against the Embreeville Freehold Land, Iron & Railway Company for the amounts of their respective claims, with interest and cost; that they be allowed to file this bill as a general creditors' bill for the benefit of themselves and all of the other creditors of the Embreeville Freehold Land, Iron & Railway Company, and that said creditors be allowed to prove their claims in this cause and have their rights and priorities declared; that said Embreeville Freehold Land, Iron & Railway Company be declared insolvent, and that a receiver be appointed by this honorable court to take charge of all its assets of every kind, character, and description and hold and dispose of them according to the orders of this court in this cause; that said insolvent corporation be wound up under the orders and decrees of this court, its property sold and converted into money, and the same distributed ratably between all of its creditors, giving priority to its home creditors; that said deed of trust executed to the defendant S. J. Kirkpatrick, trustee, be declared fraudulent and void and set aside by the proper orders and decrees in this cause; that the service of subpœna to answer and a copy of the bill in this cause upon the defendant The Embreeville Freehold Land, Iron & Railway Co. be taken as a notice that they will on the 4th day of July, 1893, make a motion before the Hon. John P. Smith, chancellor, at chambers, in Jonesboro, Tennessee, for the appointment of a receiver, as hereinbefore prayed; that the said defendant, The Embreeville Freehold Land, Iron & Railway Company, be enjoined from further encumbering, selling, or disposing of any of its property.

And if your orators have in any way mistaken their special relief, they pray for such other, further, different, and general relief as in equity and good conscience they are entitled to.

This is the first application for an injunction and a receiver in this cause.

C. M. McCLUNG & COMPANY,
COWAN, McCLUNG & COMPANY,
W. B. LOCKETT & COMPANY,
HAZEN & LOTSPEICH,
KNOXVILLE PROVISION & SUGAR CO.,
By SHIELDS, *Sol'r.*

GREEN & SHIELDS,
DEADERICK & EPPS,
Sol's for Compl'ts.

STATE OF TENNESSEE, }
Washington County. }

I, W. B. Lockett, do solemnly swear that I am one of the complainants in the foregoing bill, and that the facts set out therein as of complainants' own knowledge are true and the allegations made on information and belief complainants believe to be true.

W. B. LOCKETT.

Sworn to and subscribed before me this 19th day of June, 1893.

{ Seal of E. D. Duncan, Notary Public, Johnson City, Washington County, Tenn. }

EDWARD D. DUNCAN,
Notary Public.

STATE OF TENNESSEE, }
Washington County. }

To the clerk & master at Jonesboro, Tennessee:

Let an injunction issue, as prayed in the foregoing bill, upon complainants entering into bond, as required by law, in the sum of $500.00.

JNO. P. SMITH,
Chancellor, etc.

A. S. Deaderick, solicitor for complainants, makes oath that the defendant Pioneer Coal & Coke Company is a non-resident of Tennessee.

A. S. DEADERICK.

Sworn to and subscribed before me this June 22nd, 1893.

W. F. YOUNG, *C. & M.*

Endorsed: No. —. O. & I. bill. C. M. McClung & Company *et al vs.* Embreeville Freehold Land, Iron & Railway Company (Limited) *et al.* Filed June 20th, 1893, at 9 o'clock in the morning. W. F. Young, C. & M. Green & Shields, attorneys-at-law, rooms 15 & 16, Deaderick building, Knoxville, Tennessee.

4th Amended Bill, C. M. McClung & Co., & Exhibits Thereto.

To the Honorable John P. Smith, chancellor for the first chancery division of the State of Tennessee, sitting in chancery for the district composed of the county of Washington:

The amended bill of complaint of C. M. McClung, W. P. Smith, W. B. Keener, F. H. McClung, Jr., and C. J. McClung, Jr., partners, trading and doing business under the firm name and style of "C. M. McClung & Co.;" J. D. Cowan, C. J. McClung, Matt McClung, Jacob L. Thomas, and R. M. Rhea, partners, trading and doing business under the firm name and style of "Cowan, McClung & Co.;" W. B. Lockett, A. P. Lockett, and Ed. Lockett,

partners, trading and doing business under the firm name and style of "W. B. Lockett & Co.;" R. S. Hazen and J. O. Lotspeich, partners, trading — business under the firm name and style of "Hazen & Lotspeich," all citizens of Knoxville, Knox county, Tennessee, and The Knoxville Provision & Sugar Co., a corporation organized under the laws of the State of Tennessee, and all the other creditors of the Embreeville Fre-hold Land, Iron & Railway Company, Limited, who will come in and have themselves made parties to this suit, complainants, filed against The Embreeville Freehold Land, Iron & Railway Company, Limited, a foreign corporation organized under the laws of Great Britain, but has been domesticated under the laws of the State of Tennessee and has an office in Washington county, Tennessee; The Dent Mining Co., a corporation organized under the laws of the State of Tennessee, with its office in Washington county, Tennessee; Dosser Bros., a firm composed of R. N. Dosser, A. F. Dosser, and F. S. Dosser; Garber Bros., a firm composed of W. M. Garber and J. A. Garber; Blair Bros., a firm composed of —— Blair and —— Blair; D. Acemosa, W. J. Love, and Colin C. Wilson, residents of Washington county, Tennessee; The First National Bank of Johnson City, Tennessee, a corporation organized under the banking laws of the United States, with its office in Washington county, Tennessee; The Jonesboro Banking & Trust Company, a corporation organized under the laws of the State of Tennessee, with its office in Washington county, Tennessee; The Pioneer Coal & Coke Co., a corporation organized under the laws of Virginia, and S. J. Kirkpatrick, a citizen and resident of Washington county, Tennessee; Thomas Clarke and Thomas Reid, residents of Scotland, and Andrew Clarke, a resident of England, trustees, and Rogers, Brown & Co., a firm composed of —— Rogers, —— Brown, —— ——, residents of the State of Ohio and non-residents of the State of Tennessee, defendants.

I.

Humbly complaining, your orators show unto your honor that on June 20th, 1893, they filed an original bill in this honorable court, under the style of "C. M. McClung & Co. *et al. vs.* The Embreeville Freehold Land, Iron & Railway Company (Limited) *et als.*," against all the defendants mentioned in the caption except Thomas Clark, Thomas Reid and Andrew Clark, and Rogers, Brown & Co., wherein they charged that the Embreeville Freehold Land, Iron & Railway Company was justly indebted to them respectively in the amounts and manner as set out in said original bill; that the Embreeville Freehold Land, Iron & Railway Company (Limited) was the owner of certain real and personal property which is set out and described in said original bill; that on June 10th, 1893, a deed of trust was executed in the name of the Embreeville Freehold Land, Iron & Railway Company, whereby all of its personal property of every kind, character, and description was transferred to the defendant S. J. Kirkpatrick in trust to secure certain indebtedness set out therein, and that said deed of trust was fraudulent and void for the

reasons set out in said original bill; that the defendant The Embreeville Freehold Land, Iron & Railway Co. was insolvent and had closed down its work and ceased to carry on its business, and they prayed that all those named in the caption of said original bill be made parties defendant to said suit and be required to answer the same, but said defendants were excused from answering under oath: that complainants have decrees in this honorable court against the Embreeville Freehold Land, Iron & Railway Co., and that said creditors be allowed to prove their claims in said cause and have their rights and priorities declared; that said Embreeville Freehold Land, Iron & Railway Co. be declared insolvent, and that a receiver be appointed in said cause to take charge of its said assets of every kind, character, and description; to hold and dispose of the same according to the orders of this court in said cause; that said insolvent corporation be wound up under the orders and decrees of this court, its property sold and converted into money, and the same be distributed ratably between all its creditors, giving priority to its home creditors; that said deed of trust executed to the defendant S. J. Kirkpatrick, trustee, be declared fraudulent and void and set aside by the proper orders and decrees in said cause, and for general relief; all of which allegations and prayer will appear from an inspection of said original bill, which is here referred to for its full contents. Your orators made other charges, and set out other facts, and prayed for other relief besides that hereinbefore set out; all of which will appear from an inspection of said original bill, which is referred to and made a part of this amended bill.

2.

And now your orators come and bring this their amended bill of complaint into your honor's said court, and in addition to what is shown in said original bill respectfully show unto your honor that they are informed and believe and thereupon charge that although, as stated in said original bill, the said Embreeville Freehold Land, Iron & Railway Company is the owner of the tract of land mentioned and described in section III of said original bill, to wit, "A certain tract or parcel of land lying and being in the counties of Washington, Unicoi, and Greene, in the State of Tennessee, known as the Embreeville Iron Works land," which lands extend westward from Embreeville, in Washington county, to the old Greene county line, easterly to the Carter county line, and southerly to the North Carolina State line, and containing about 47,000.00 acres of land, be the same more or less," upon which the iron furnace of said company is situated at Embreeville, Tennessee; nevertheless, that the naked legal title to said tract of land is in said new defendants, Thomas Clarke, Andrew Clarke, and Thomas Reid; that said tract of land was purchased by and for the said Embreeville Freehold Land, Iron & Railway Company to use in its business as a manufacturing corporation, and was fully paid for with the money of said corporation, but for some reason unknown to your orator the deed therefor from the grantors, James G. Miller and Francis Laura

Miller, his wife, was executed to the said Thomas Clarke, Andrew Clarke, and Thomas Reid, as trustees. Said deed bears date Jan. 16th, 1890, and is registered in the register's office in Washington county, in Book of Deeds No. 57, at page 647 *et seq.* Said deed upon its face shows that said grantees *gold* said land in trust, but for whom or for what purpose is not expressed. It recites that a large sum of purchase-money upon said lands remains yet unpaid; but your orators are further informed, believe, and charge that said purchase-money has all been fully paid and satisfied. Said defendants, Thomas Clark, Andrew Clark, and Thomas Reid, took said deed and holds said property in trust for the use and benefit of the said Embreeville Freehold Land, Iron & Railway Co. and now so holds the title and are naked trustees for that purpose.

II.

Your orator- further show and charge upon information and belief that the said defendants, Rogers, Brown & Co., have been acting as agents of the said Embreeville Freehold Land, Iron & Railway Co. in selling its products of iron, and claim that in said business they have made large advances of money to said defendant corporation, and that to secure the payment of said advances said corporation gave to them a lien upon a large quantity, to wit, about 900 tons, now at or near the furnace of said corporation in Washington county, and said Rogers, Brown & Co. are claiming and insist upon the right to remove and carry away said iron for the satisfaction of their said lien and credit. Said lien, if any exist, is not registered in the register's office of Washington county, where said property is and said company did business.

III.

Your orators further show that said Embreeville Freehold Land, — & Railway Company is a foreign corporation, chartered and organized under the laws of Great Britain, but domiciled in the State of Tennessee by virtue of the acts of the General Assembly of the State of Tennessee of 1877, chapter 31, and the amendments thereto, and that pursuant to said acts — did, in the year 1890, file a certified copy or copies of its charter in the office of the secretary of state at Nashville, and caused an abstract of said charter to be registered in the register's office of Washington county, Tennessee.

Your orators are all residents of the State of Tennessee and were such at the time the various debts sued on in this cause were created. They are informed and believe that there are other creditors of said defendant corporation who are likewise residents of the State of Tennessee and were at the time the respective credits were given; and your orators are advised that under and by virtue of the statutes of Tennessee, and especially under which said defendant corporation has been doing business, your orators, together with all other Tennessee creditors, are entitled to priority and payment of their various debts out of the assets of said corporation, and that

by virtue of said statutes and the fact here above stated their rights to said assets are superior to those of the said defendant, Rogers, Brown & Co., and all other creditors of said insolvent corporation who do not reside in the State of Tennessee or did not *do* so reside at the time their credits were given.

IV.

Your orators here now repeat and rely upon all the allegations and charges made in their original bill. The new facts stated in this amended bill have been ascertained by your orators since the filing of the original bill, but said facts existed at that time.

Your orators come and on behalf of themselves and all other creditors of said Embreeville Freehold Land, Iron & Railway Co. file this their amended bill and pray:

1st. That all those named as defendants in the caption hereto be made parties defendant by issuance of process and service of subpœna to answer and by publication as to non-residents, and be required to answer, but answers on oath are expressly waived.

2nd. That upon final hearing the defendants Thomas Clarke, Andrew Clarke, and Thomas Reid be declared to hold the title to said lands in trust for the said Embreeville Freehold Land, Iron & Railway Company, Limited, and that said lands be sold as the property of said corporation and the proceeds distributed to its creditors in the proceedings; that your orators and the other Tennessee creditors of said defendant corporation be declared to have priority of rights to the proceeds of the iron claimed, as aforesaid, by said Rogers, Brown & Co.; that said Embreeville Freehold Land, Iron & Railway Co. be wound up as an insolvent corporation in this cause, the rights and priorities of your orators and all other creditors of said company be declared and adjudged, and all other creditors and sales and proceedings be made and had for that purpose.

3rd. And your orators pray as they prayed in their original bill.

4th. And if mistaken in their special prayers, they pray for all such other, further, different, and general relief as the facts and rules of — will warrant.

C. M. McCLUNG & CO.,
COWAN, McCLUNG & CO.,
W. B. LOCKETT & CO.,
HAZEN & LOTSPEICH,
KNOXVILLE PROVISION & SUGAR CO.,
By SHIELDS, *Sol.*

GREEN & SHIELDS,
DEADRICK & EPPS,
HENDERSON & JOUROLMAN,
Sol's for Compl't.

STATE OF TENNESSEE, *Knox County.*

Samu'l G. Shields, agent and att'y for the complainants in the foregoing bill, makes oath in due form of law that the facts stated therein as of complainants' own knowledge are true and the facts stated as on information and belief he believes to be true.

SAM'L G. SHIELDS.

Sworn to and subscribed before me this June 27, 1893.

[Seal of Chas. H. Brown, Notary Public, Knox County, Tenn.]

CHAS. H. BROWN, *N. P.*

Endorsed: No. 705. Amended bill. C. M. McClung & Co. *et al. vs.* Embreeville Freehold Land, Iron & Railway Company, Limited, *et al.* Filed June 28th, 1893. W. F. Young, C. & M. Green & Shields, attorneys-at-law, rooms 15, 16, Deadrick building, Knoxville, Tenn.

Answer.

C. M. MCCLUNG & COMPANY *et al.*
vs.
THE EMBREEVILLE FREEHOLD LAND, IRON & R'Y CO., LIMITED, *et al.*

Original and amended bills in the chancery court of Washington county.

I.

The joint and several answers of the Embreeville Freehold Land, Iron & Railway Company, hereinafter for convenience called respondent company; S. J. Kirkpatrick, as trustee, and Andrew Clark and Thomas Reid, also trustees, to the original and amended bills exhibited against them in the above-entitled cause.

For answer to so much and such parts of said bills as they are advised is material for them to make answer unto, answering, say: The respondent company is a foreign corporation organized under the laws of Great Britain, but domiciliated under the laws of Tennessee, with its principal office at Embreville, in said county of Washington, and owning property and carrying on the business of iron mining and manufacturing at said place. The respondent Kirkpatrick is a citizen and resident of said county, and respondent Clark and Reid are residents of the Kingdom of Great Britain.

II.

Respondent company is the owner of a large amount of personal property, mostly situated in said county of Washington, but a part of same is in the county of Unicoi, near the line separating said counties, and is also the equitable owner of a furnace plant in said

first-named county, which, with its equipment, cost respondent company and is now of the value of $250,000, and is in like manner the owner of a body of timber and mineral lands situate in the two counties named and the county of Greene, in said State, comprising a large number of adjoining tracts, estimated to contain in the aggregate 47,500 acres and approximately worth $500,000. The title to all of said real estate is vested in respondents Clark & Reid, in trust for respondents' company and for the holders of certain debentures issued by said company; but it is not true, as averred in the bill, that the deed of Miller and wife to said trust respondents declares said trust or vests said title in said respondents as "trustees" specifically. Sir Richard Clark, one of the vendees named in said deed, withdrew from said trust, leaving respondents as sole trustees.

III.

Respondent company admits that it is indebted to complainants on general mercantile accounts in several certain amounts, but it denies that said indebtedness is correctly stated in the bill or shown in the exhibits filed therewith; hence respondents demands *demand* proof of said indebtedness other than said several probated accounts, unless respondent company hereafter agrees with complainants as to the true amounts severally due.

IV.

Respondents admit that on June 15th, 1893, respondent company, through its general manager, Wm. J. Love, who was fully authorized so to do, did convey in trust to respondent Kirkpatrick certain personal property for the security and payment of the debts mentioned in said deed; but respondents expressly and wholly deny that said deed was executed for the purpose of hindering, delaying, or defrauding complainants or any other of respondent company's creditors, or that it was meant to give said creditors any prior and fraudulent advantage over complainants or other creditors, and they deny that it did have or would have had any such effect. They deny that said conveyance embraced and included all the personal property of respondent company. On the contrary, they charge that respondent company then had and owned and so owned at the time of the filing of complainants' bill, subject to process within the jurisdiction of this honorable court, personal property in and about its premises of value fully equal to and more than the aggregate amount of complainants' debts and all costs which would have accrued in any proper proceeding to have same applied to the satisfaction of said debrs.

Respondents deny that respondent company was then or is now insolvent, or that it had committed any act of insolvency or ceased to use any of its franchises or purposed or intended doing so. They deny that complainant or any one else had then or ever had any right to *sieze* its property, or place same in the custody of the court, or proceed against it to have its property and effects administered as an insolvent corporation.

Respondents say and charge that said Wm. J. Love, as the chief officer of respondent company in the State of its domestication, had full power to execute said conveyance in the name of and for the benefit of respondent company, and that there is no requirement of law that the same should have been attested by the corporate seal. Had such requirement existed, he could easily have complied therewith, as he had said seal then in his possession and custody, and was empowered to affix it when and wheresoever needed in the conduct of his principal's business.

Further answering in relation to said trust conveyance, respondents say respondent company had been operating its furnace previous to June 15th, 1893, for more than a year, and had made and put on the market many thousand- of tons of pig iron, the superior quality of which found for it a ready market at remunerative prices. Respondent company's monthly pay account amounted to $25,000.00 or upwards, and its business gave employment to several hundred laborers.

The average output of the furnace was about 3,700 tons of pig iron per month. The sale of this product not only provided ample funds to defray all the expenses of operating, of material and supplies, but a surplus which which was applied to improving and enlarging respondent company's plant and property. Said respondent's credit was never questioned nor was there any grounds therefor, as it was generally able to pay cash on all its transactions when conditions were anything like normal.

Just previous to the date named there set in a condition of things relating to the furnaces of the country which has become a part of the current history of the times and which has left as its memorial a wreckage and ruin without a parallel. It was the beginning of an acute stage of general bankruptcy which had been pending for many months previous and which prevails, though with abated intensity, at this time. Respondent company was then producing on an average about 140 tons of pig iron per day; its labor was splendidly organized, its mines yielding satisfactorily; it had in stock near 10,000 tons of ore and much other material. It had on the yard about 3,000 tons of pig iron which, with a market depressed more than ever before known in the history of the iron business, ought to have commanded $30,000 cash, yet respondent on the very eve of a pay-day was startled with the advice from its factors that not a dollar could be raised on iron at any price, banks were failing on all hands, and furnaces and iron works all over the country were closing out and stopping production. Respondent's pay-roll was mostly made up of laborers and furnishers of material, employees, and its most pressing debts aside from these were due to banks and others who had furnished money and material to carry on the work. These demanded their pay or, in default, absolute security. Want of confidence and panic prevailed everywhere and among all classes. The claims embraced in the trust conveyance were of that class in good part which were by statute liens on all of respondent company's property. By securing same by pledge of a portion of its assets would satisfy the claimants and give respondent company

time to convert said assets into cash without ruinous sacrifice, would save costs of suits to enforce said liens, and would relieve all respondent company's other property from the lien of these particular demands. Respondent company therefore considered it to be its plain duty to execute said trust from considerations of business policy looking to its own interest, together with that of all other creditors, and, furthermore, it deemed it a simple act of justice that it should do so.

Complainants' allegation of insolvency, in face of the fact that at the time it was made they could not have had knowledge of an indebtedness (under the statute giving domestic creditors priority of satisfaction over non-resident and foreign ones out of the assets of foreign corporations) exceeding $75,000.00 (because it did not exist) and there being plainly in sight at the time real and personal property available for their satisfaction worth more than half a million dollars at forced sale, affords an instance of thoughtlessness which fortunately does not often occur.

V.

It is true that at the date when complainants filed their bill respondent company could not command funds to meet its current expenses, and, as further stated, it had shut down its furnace and suspended operations; but neither fact was due to lack of assets or because of insolvency, but, as hereinbefore stated, money could not be had in exchange, even for the standard commodity of high-grade pig iron, and to continue its production under such conditions would have been worse than folly. The strongest and most solvent iron plants in the country pursued a like policy, and *and* had not this course on its part, which met with the approval of the best business talent of the country, been made the pretext on the part of complainants to bring their suit and indulge their unfounded charge of insolvency, thereby creating suspicion and distruct and undermining its credit, respondent company would doubtless long before this — been enabled to raise the funds necessary to entirely relieve its temporary embarrassments.

The inconsiderate anxiety and feverish haste on the part of complainants to disport themselves in court as the first to begin the work of demolishing a property and business which had been to them, or the most of them, at least, a source of large profit, and with fair or just treatment would have continued to be so, for the ostensible object of securing demands the aggregate of which does not exceed 2% of the value of respondent company's assets, is a course of conduct which cannot commend complainants to the enthusiastic consideration of a court of conscience, more especially as complainants' claim-, as above indicated, are preferred by statute to all others non-resident of the State, and there was never at any time even a possibility that they would not be fully paid.

It is not true that respondent company was at the date of filing complainants' bill "largely indebted to a great number of persons, much of which was long past due, and that it was being pressed to

pay same." As compared with the value of its assets and extent of its business, respondent company at that time owed but an inconsiderable number of debts and but few of same were matured. None of its paper had ever gone to protest, nor had it ever been sued to enforce collection of any debt simply on account of nonpayment. The sum total of its contract debts in this country, including balance due for construction, will not, as respondents have reason to believe, exceed the outside sum of $120,000, while to meet this the inventory made by the receiver appointed by this court shows personal assets of the estimated value of $65,529.75, aside from a debt due respondent company of about $148,000 from the Embreeville Town Company as purchase-money for a town site recently conveyed by respondent company to said town Co. and which is secured by mortgage on about 1,000 acres of land in the neighborhood of said furnace plant and on which said town company has expended, as respondents are informed, near $50,000 in grading streets and making other improvements; and besides the receiver reports 10,797 feet of tram track complete, which is personalty, on which he fixes no value. This should have been reported at a value, at least, of $5,000.00. The receiver's estimate of the value of the furnace plant and real estate is not above 50% of its actual value.

It is not true that at the time respondent company shut down its furnace and when complainants' bill was filed it could not procure supplies to continue its operation. The fact is that at these dates its credit was good. It could have obtained all the material it required. There was actually in transit then about 50 car-loads of coke, which has since been delivered to the receiver at the furnace; also limestone, etc.

It is true that respondent company is indebted to "some of its officers and stockholders who are citizens and residents of Great Britain," but respondents deny that there was any warrant, either in law or fact, for the charge that respondent company would encumber its property by mortgage to secure such creditors to the detriment of complainant and other domestic creditors. This charge evinces a forgetfulness of the statute which complainants elsewhere invoke that is as surprising as it is disingenuous. No mortgage or trust conveyance executed or registered after the making of complainants' or other domestic debts securing non-resident foreign creditors could, according to the plain letter of the statute, have availed anything against such domestic demands, and the suing out of an injunction in the cause against such impossible mischief was wrongful and did great injustice to respondent company.

Respondents deny that complainants' bill makes a case which authorizes the appointment of a receiver or entitles said bill to be retained in court as a general creditors' bill, or that complainants are entitled to have said trust conveyance set aside or to have the corporate affairs of respondent company wound up in the court.

Respondents again deny all charges of fraud, in law or fact; and, having fully answered, they pray that the complainants be not allowed to file their bill as a general creditors' bill, that the receiver

be discharged, that the injunction be dissolved and the property conveyed in said trust deed be restored to respondent Kirkpatrick as trustee, and that respondent company be restored to the custody, management, and control of its property, affairs, and business, and that they be hence dismissed with their reasonable costs, etc.

THE EMBREEVILLE FREEHOLD LAND,
IRON & RAILWAY CO., LTD.,
THOMAS REID,
AND'W CLARK, *Trustees*,
S. J. KIRKPATRICK, *Trustee*,
By S. J. KIRKPATRICK, *Att'y.*

KIRKPATRICK & BOWMAN, *Sol's.*

Wm. J. Love, general manager of the def't Embreeville Freehold Land, Iron & Railway Company, makes oath that the facts set forth in the foregoing answer of his own knowledge are true and those stated on information and belief he believes to be true.

W. J. LOVE,
General Manager.

Sworn to and subscribed before me on this 17th Nov., 1893.
W. F. YOUNG, *C. & M.*

In the Chancery Court of Washington County, Tennessee.

C. M. McCLUNG & Co. *et al.*
vs.
THE EMBREEVILLE FREEHOLD LAND, IRON & R'Y Co. *et al.*

Petition of C. G. Blake & Rogers, Brown & Co.

To the Hon. Jno. P. Smith, chancellor, presiding in the chancery court at Jonesboro, Tennessee:

Your petitioners, C. G. Blake and Rogers, Brown & Company, respectfully show to the court as follows:

I.

That they are residents of the State of Ohio and were at the times and dates hereinafter named engaged in business in said State, their residences, offices, and places of business being at the city of Cincinnati.

II.

That on or about the 15th day of June, 1893, the Embreeville Freehold Land, Iron & Railway Company, being then, as now, insolvent, made a pretended assignment of certain of its assets to secure certain of its creditors over certain other of its creditors, as will more fully appear by reference to a certified copy thereof on file in this cause as an exhibit to the original bill and which is here referred to.

III.

That on or about the 20th ——, 1893, complainants in this cause filed their original bill herein as a general creditors' bill, seeking to set aside said assignment so made as fraudulent, which said bill and the jurisdiction thereby sought to be acquired has been sustained, and this court has assumed charge and jurisdiction of the affairs of said corporation as an insolvent corporation and will be called upon to adjudge the right and priorities of all creditors and to administer the affairs of said corporation as an insolvent corporation under the rules and upon the principles governing such cases.

IV.

That your petitioner C. C. Blake is a creditor of said corporation in the sum of ten thousand forty and $\frac{43}{100}$ ($10,040.43) dolla-s upon open account for coke and coal sold and delivered to said company during the months of April, May, and June, 1893, an itemized statement of said account being hereto appended and being marked Exhibit "A" to this petition.

V.

That your petitioners, Archer Brown, William A. Rogers, Daniel B. Meacham, M. Cochran Armour, and William C. Herron, trading as Rogers, Brown & Company, are creditors of said corporation in the sum of twenty-one thousand four hundred sixteen & $\frac{26}{100}$ ($21,416.26) dollars upon open account for monies paid and advanced to the use and benefit of said defendant corporation at its instance and request, an itemized statement of said account being hereto appended, marked Exhibit "B," and which is prayed may be taken and treated as a part of this petition.

VI.

That after the filing of said bill the creditors of said corporation met the representatives of said corporation on July 6th, 1893, and entered into a stipulation by which the determination of all questions should be held in abeyance until September 15th, 1893, within which period it was represented that said corporation would raise the necessary means with which to discharge its obligations and liabilities, and that on September 15th a further extension was granted until October 16th, 1893, for like purposes. No payment has been made under said agreement.

The original contract made and entered into between said corporation and its creditors is hereto appended, marked Exhibit "C," and is prayed to be taken and treated as a part of this petition.

VII.

At the time said furnace company suspended and made its pretended assignment there was upon the tracks, in the cars, and undelivered to said corporation by the carriers over whose lines the

same was transported, — tons of coke, of the value of —— dollars, consigned by petitioner Blake, relative to which said coke said Blake exercised the right of stoppage in transit, and which said coke was thereafter delivered under the terms of paragraph one, page two, of said contract, Exhibit "C," to the receivers of said corporation, subject to such rights as were required by said Blake because of said stoppage in transit.

VIII.

Your petitioner Blake further shows to the court that parcel of his account, to wit, $2,008.80, was payable in cash on May 15th, 1893; other parcel, to wit, $6.006.33, was payable in cash June 15th, 1893, and the balance, to wit, $2,025.30, was payable in cash on July 15th, 1893, and that each of said sums should bear interest from said date. Not a penny was ever paid by said defendant corporation to said Blake upon any account, and he charges that, the said demand being for materials and supplies furnished within three months before ascertained insolvency, said demend should be given a preference in adjustment of the priorities of creditors.

IX.

Your petitioners Rogers, Brown & Company show that for a long time prior to the 15th day of February, 1893, they had been dealing with the said Embreeville Freehold Land, Iron & Railway Company, Limited, selling iron for their account on commission, making advancements of money on said account to said company in anticipation of sales, so that on the said date the Embreeville Freehold Land, Iron & Railway Company, Limited, was justly indebted to your petitioners, as a balance due your petitioners on account of said transactions, in the sum of sixty-five thousand three hundred and twenty-seven dollars and eighty-eight cents ($65,327.88); that subsequently and down to the 19th day of June, 1893, inclusive, said transactions continued between said company and your petitioners, and at various times between said 15th day of February, 1893, and said 19th day of June, 1893, your petitioners continued to advance money to said company in anticipation and on account of sales of iron in various amounts, and all as shown in an itemized statement of said account hereto appended and made part hereof.

Your petitioners further show that between the 19th day of April, 1893, and the 19th day of June, 1893, inclusive, your petitioners became indebted to the said Embreeville Freehold Land, Iron & Railway Company, Limited, as shown in an itemized statement of account aforesaid, to wit, for proceeds collected by your petitioners on sales of iron made for the account of said company, and for interest, allowances, and other charges specified in said itemized statements of accounts.

Your petitioners further show that as against said account the said Embreeville Freehold Land, Iron & Railway Company, Limited, is further credited, as shown in said account, with the sum of forty-nine thousand three hundred and sixty-three $\frac{4}{100}$ dol-

lars ($49,363.04), representing the net amount which would be owing by your petitioners on said account for iron sold but uncollected for at this date, if collected.

Your petitioners further show that, as shown by said itemized statement of account, and so far as your petitioners are able to state said account at this time, the said The Embreeville Freehold Land, Iron & Railway Company, Limited, is justly indebted to your petitioners, as a balance due on said account, in the sum of twenty-one thousand four hundred and sixteen and $\frac{26}{100}$ dollars ($21,416.26). Said sum of $21,416.26 is subject to the lik-lihood of increase by way of reductions which your petitioners may hereinafter be compelled to allow on sales of iron for shortage in weight and for freight overcharges in settling with customers for the iron mentioned above as sold but uncollected for.

Your petitioners further show that as partial security for their indemnity against said balance of $21,416.26 the said Embreville Freehold Land, Iron & Railway Company, Limited, did heretofore and prior to the occurrence of the several acts and things complained of in the bill of equity aforesaid deliver to these petitioners, who are now in possession of same, nine hundred and eighty-five (985) tons of iron in storage at Embreeville, Tennessee.

Your petitioners further show and charge the fact to be that all the advances procured by the said Embreeville Freehold Land, Iron & Railway Company, Limited, from these petitioners were procured under assurances made by said company to these petitioners and by them believed to be true; that said The Embreeville Freehold Land, Iron & Railway Company, Limited, was solvent, and which said representation was false when made and was known by the said company to be false. Petitioners aver and charge that with the proceeds of the advances thus procured to be made by these petitioners to the said company it paid and discharged its pay-rolls and accounts for work and labor done and for supplies and materials furnished, the holders of which said demands were entitled in law to a superior lien upon the property and franchises of said company, to which liens your petitioners charge that they are by reason of the payment of the same with their money entitled to — subrogated in equity and are entitled to have audited and awarded all such demands in their favor the same as though said demands had been in fact assigned to these petitioners.

Your petitioners are unable, because of want of access to the books and papers of the said company, to set out with specifications and details the several demands discharged with their moneys and advances as aforesaid, but they charge that the same is capable of proof upon an account and examination of said company's books; all of which your petitioners pray may be done and during the further pendency and progress of this cause.

X.

Your petitioners jointly show that they are non-residents of the State of Tennessee; that the defendant The Embreville Freehold Land, Iron & Railway Company, Limited, is a foreign corporation,

created and established under the laws of Great Britain, but carrying on business in this State under the provisions of the act of 1887, chapter 3, Code, sec. 1992 to 2003, inclusive, and because of the provisions contained in the acts cited the complainant in this cause residents of this State claim priority of right, in the distribution of the assets of this corporation, over other creditors of said corporation citizens of the United States, but not of the State of Tennessee.

Petitioners aver that the provisions of said act, in so far as the same seeks to give preferences and benefits to the complainants or other citizens of Tennessee over petitioners or other citizens of the United States, is in contravention of the provisions of the third clause of the eighth section of article one of the Constitution of the United States and void.

XI.

The premises considered, petitioners pray that an order be made permitting the filing of this petition in said above-named cause, and that they be made parties thereto, with leave to establish their claims, and for decrees enforcing their respective rights, liens, anequities, as herein set out, and that they have decrees for their respective demands and for general relief.

YOE & CORNICK, *Sol'rs.*

HEALY & BRANNAN,
WALTER L. GRANGER,
Of Counsel.

STATE OF TENNESSEE, }
Knox County. }

Tully R. Cornick, being duly sworn, says that he is one of the agents and solicitors for the above-named —, and that the facts stated in the above petition are true according to the best of his knowledge, information, and belief.

TULLY R. CORNICK.

Sworn to and subscribed before me this Nov. 9th, 1893.

W. K. ANDERSON, *N. P.*

Fee, 20 cents. Paid Yoe & Cornick.

We acknowledge ourselves bound as sureties for costs on prosecution of above petition.

YOE & CORNICK.

Nov. 9th, 1893.

In the Chancery Court, Washington County, Tenn.

C. M. McCLUNG & Co. and Others
vs.
THE EMBREEVILLE FREEHOLD LAND, IRON & RAILWAY COMPANY and Others.

Intervening Petition of The Hull Coal & Coke Company.

To the Hon. John P. Smith, chancellor, presiding over the chancery court at Jonesboro, Tennessee:

Your petitioner, The Hull Coal & Coke Company, respectfully represents and shows as follows:

I.

That it is a corporation created and established under the laws of the State of Virginia, with its principal office in Roanoke, in said State.

II.

That on or about the 15th day of June, 1893, The Embreeville Freehold and, Iron & Railway Company, Limited, being then, as now, insolvent, made a pretended assignment of certain of its assets to secure certain of its creditors over certain other of its creditors, as will more fully appear by reference to a certified copy of said instrument on file in this case as an exhibit to the original bill and which is now here referred to.

III.

That on or about June 20th, 1893, complainants in the above-entitled cause filed their certain bill herein as a general creditors' bill against the said Embreeville Freehold Land, Iron & Railway Company, Limited, and others, seeking to set aside said assignment as fraudulent, which said bill and the jurisdiction sought to be acquired has been sustained, and this court has assumed charge and jurisdiction of the affairs of said corporation as an insolvent corporation, and will be called upon to adjust the claims of all creditors and administer the affairs of said company under the rules governing such cases.

IV.

That your petitioner, The Hull Coal & Coke Company, is a creditor of said corporation in the sum of three thousand five hundred and eighty-two and $\frac{77}{100}$ dollars ($3,582.77), with interest thereon, upon open account, for coke furnished to the said defendant, The Embreeville Company, at its instance and request, an itemized statement of which said account is hereunto appended, marked Exhibit "A," which is prayed to be taken and treated as a part of this petition.

V.

After the filing of said bill the creditors of said corporation met the representatives of said corporation on July 6, 1893, and entered into stipulation by which — the determination that all claims should be held in abeyance until September 15th, 1893, within which period it was represented that said corporation would raise the necessary means to discharge its obligation and liabilities, and on September 15th a further extension was granted until October 16th for a like purpose. No payment has been made under said agreement.

The original contract made and entered into between said corporation and its creditors is marked Exhibit "C" and appended to the petition of C. G. Blake and Rogers, Brown & Co., heretofore filed in this case, and is prayed to be taken and treated as a part of this petition.

By the terms of said contract last above referred to, it is expressly provided that the coke then in transit or upon the cars undelivered to said defendant insolvent corporation should be stopped in transit and the delivery thereafter made under the terms of said contract should be subject to the specific lien created by reason of the exercise of said right of stoppage in transit. Of said amount so due to this petitioner $2,494.55 represents 1,484 $\frac{2,096.41}{2000}$ tons of coke delivered, at $1.68 per ton, prior to the suspension of said furnace company's operations, as is set out in said Exhibit "A," on pages 1 and 2 thereof. The balance of said account, to wit, $1,088.32, represents 647$\frac{3}{4}$ tons of coke, touching which the right of stoppage in transit was exercised and which was unloaded and delivered after said defendant corporation made its pretended assignment, and upon which coke there existed the lien created by exercise of stoppage *in transitu*. No portion of either of said amounts has been paid, and the same with interest thereon is a just charge against said defendant corporation.

VI.

Your petitioner further shows that he is a non-resident of the State of Tennessee; that the defendant The Embreeville Freehold Land, Iron & Railway Company, Limited, is a foreign corporation, created and established under the laws of Great Britain, but carrying on business in the State of Tennessee under the provisions of the act of 1877, chapter 31, Code, sections 1992 to 2003, inclusive, and under the provisions contained in the acts cited complainant in this case residents of this State claim priority of right in law in the distribution of the assets of said corporation over other creditors of the corporation citizens of the United States, but not citizens of the State of Tennessee.

This petition- avers that the provisions of said act, in so far as the same seeks to give preferences and benefits to the complainants or other citizens of Tennessee over petitioner or other citizens of the United States, is in contravention of the provisions of the third clause

of the 8th section of article 1 of the Constitution of the United States, and is therefore void.

VII.

Your petitioner further shows that its demand is for materials used and consumed by said defendant, The Embreeville Freehold Land, Iron & Railway Company, in the production of the iron on hands at the time it suspended its business, and which said iron has been sold and its proceeds used in the payment of taxes and other superior charges upon the property of said defendant corporation or is now in the possession, custody, and control of this court, through the medium of its receiver, Walter P. Brownlow, Esq.

All of the coke furnished by this petitioner was furnished within 60 days next preceeding the suspension and assignment made by said corporation, and your petitioner is advised that it has an equitable lien superior to the claims of other creditors other than those embraced within this class, and labor liens upon the chattel estate and general assets belonging to said corporation because of the character of its said demand.

VIII.

Your petitioner is further advised that the proceeds of the chattel estate having been used in the payment of taxes and other superior encumbrances upon the real estate of said corporation, that it is entitled in equity to pursue the real property belonging to said corporation and have established against it a superior lien over that of creditors of any other class.

Premises considered, your petitioner prays for leave to file this petition and for an order permitting it to become a party to said cause, and for a decree for the amount of its said demand, and for an enforcement of its lien against the coke which was stopped in transit, and for a decree declaring its demand a lien upon the chattel estate of said corporation, and for a decree permitting it to follow the proceeds of the iron on hands at the time of its suspension into the real property in so far as the same has been used in the discharge of superior encumbrances thereon.

Petitioner prays for all such other, further, different, and general relief as it may be entitled to in equity and as the facts may warrant.

THE HULL COAL & COKE CO.,
By CORNICK, *Att'y.*

TULLY R. CORNICK, *Solicitor.*

STATE OF TENNESSEE, }
Knox County. }

Tully R. Cornick, being duly sworn, says that he is the agent and attorney of the Hull Coal & Coke Company for the purpose of prosecuting this suit, and that the facts stated in the foregoing petition are true according to the best of his knowledge, information, and belief.

TULLY R. CORNICK.

Sworn to and subscribed before me this 24th day of April, 1894.
JOHN F. VINES, *D. C. & M.*

Petition of London Trust Company.

In the Chancery Court at Jonesboro, Washington County, Tennessee.

C. M. McClung & Co. *et al.*
vs.
The Embreeville Freehold Land, Iron & Railway Co., Limited, *et al.* } No. 705.

Your petitioner, The London Trust Company, Limited, a corporation of the United Kingdom of Great Britain and Ireland, and having the principal office in the city of London, England, respectfully shows to the court, and in accordance with the orders heretofore made presents its claim as follows:

I.

On the 16th January, 1890, James Gordon Miller, of England, the owner of "Embreeville," described in Exhibit "A" to the amended bill in this cause, duly conveyed the same in fee by deed to Thomas Clarke, Andrew Clarke, and Thomas Reid, all of Great Britain, subject to purchase-money liens to amount of about one hundred and seven thousand five hundred dollars ($107,500), besides accrued interest.

Debentures forming a part of the issue of one hundred and twenty thousand pounds sterling (120,000), hereafter described, in addition to the sum last aforesaid, to amount of two hundred and fifteen thousand dollars ($215,000), were also issued and delivered as part of the purchase-money, thus making the sum of three hundred and twenty-five thousand dollars ($325,000) purchase-money which stands directly as a vendor's lien, to secure which title was retained in Clarke, Reid and Clarke in their first sale to and — trust for the Embreeville Freehold Land, Iron and Railway Company, Limited.

II.

The purchase of said Embreeville lands was negotiated by certain parties then engaged in forming the Embreeville Freehold Land, Iron and Railway Company, Limited, for the use and benefit of themselves and their associates and of the said company, and the title thereto was vested in said Clarke, Reid and Clarke absolutely upon the face of the deed, and because of the confidence reposed in them by said purchasers and by the public of Great Britain, and with the understanding and agreement that they should hold said title in trust for the benefit of the holders of debentures or bonds to be issued on the faith of the title retained in the said Clarke, Reid and Clarke, who took said title for the purpose of affording security to all who might invest money on the faith of their title and ownership in the property, and subject to such and all such liens and claims as they might under the title withhold for the

purpose so guaranty, and subject to and charged with the debts so guaranteed by the said Clarke, Reid and Clarke on the payment of all such debts to be conveyed to the Embreeville Freehold Land, Iron and Railway Company.

III.

On the sixth of March, 1890, said trustees declared a trust in a long and somewhat complicated instrument, which combined a mortgage by the Embreeville Company on its personal property, with a declaration of trust on the part of Clarke, Reid and Clarke for the security of debentures to be issued, and which instrument provided for the issuance of further debentures, to be secured by the same retention of title in the future. This instrument is referred to for fuller exposition of its contents, is duly registered in Tennessee, and a certified copy filed as Exhibit "B" to bill; and under said instrument debentures were issued for approximating the amount therein recited as the first issue of debentures of the company.

IV.

In January and February, 1893, the directors of the Embreeville Freehold Land, Iron and Railway Company, among who were many holders of large amounts of the general or first issued debentures above referred to, found that the company was in need of money to meet its pressing obligations, and was especially pressed by demands on the part of American creditors, which then amounted to about $100,000, as was stated, and they applied to petitioner to make a loan on the faith of the title retained, vested by said deed of Miller in the trustees, Reid & Clarke (Thomas Clarke having resigned and conveyed his title to his cotrustees), and on application of and by the consent given by the original debenture-holders new debentures were issued on the 16th day of February, 1893, to petitioner to the amount of 25,000 pounds sterling, for which it paid in cash said amount to the said company, with the distinct understanding and agreement that this money was to be used for the settlement of the claims which were reported as pressing from the American creditors and to give working capital, so that the operations of the company might go on, and that with the concurrence of Clarke and Reid, who held the title for purpose of securing such debts, the said loan and each of petitioner's debentures was made a prior charge, superior to all other charges and liens, on said Embreeville estate, as shown in declaration of trust and mortgage, duly registered in said Washington county and referred to as Exhibit "C" in complainants' bill.

V.

Petitioner avers that of said sum of 25,000 pounds sterling only about the sum of sixteen thousand dollars (16,000) was actually used for the payment of the current unsecured debts, and that the remainder of the same was taken by the general debenture-holders

and applied to payment of interest on their own general debentures first above described, leaving the company on this side of the Atlantic so crippled that this suit for winding up its affairs has been the result, and that petitioner has this further claim for priority over the first issued or general debenture-holders.

VI.

No interest has been paid, as required, on said lien debentures of petitioner, and by their own terms all of said debentures are now due, principal and interest.

VII.

Petitioner claims that inasmuch as under the clauses of the first declaration of trust and mortgage of 6th March, 1890, the debenture-holders have in due form held proper meetings, and by the action of the trustees, as provided for in said first indenture, Exhibit "B" to the bill, provided for the priority of complainants' claim, petitioner is entitled to priority in satisfaction out of the real assets of the company as against all other claims.

Petitioner claims that inasmuch as the money which petitioner furnished on the debentures was used for the payment of interest on the general debentures of 6th March, 1890, contrary to the representations made by the managers of the company and representations of the general debenture-holders, petitioner is further entitled to, on the principles of subrogation, *to* the first lien recovery of judgment and distribution of proceeds of sale on the share of the general debenture-holders for so much of the money furnished by it as went into the payment of interest on these debentures.

Petitioner claims that the action of the debenture-holders, the majority of whom it will be ready to show by proof formed party to the instrument referred to as Exhibit "C," by receiving money furnished by petitioner and applying it on their own debentures — estopped from denying petitioner's prior claim, and that the proceeds of sale of all the realty should be first applied to satisfy the claim of petitioner.

VIII.

Petitioner shows that the present trustees, Andrew Clarke and Thomas Reid, filed on the 28th day of July, 1894, their petition in this court setting up the rights of the debenture-holders of both classes, as set up in the petition and will be established by due proof as against all other creditors, but in the petition of the trustees all questions of priority as between the different classes of debentures are avoided and left to be settled by the court. Wherefore your petitioner files this petition and prays—

That this petition be filed as the petition of the London Trust Company, holding all the debentures referred to in the declaration of trust and mortgage of date 16th February, 1893, Exhibit "C," referred to above.

That notice thereof be given according to the practice of this court and special orders in this cause.

And that petitioner be declared to have first right and equity and lien in and upon the realty conveyed in said deed of Miller first above referred to and prior right to the proceeds of sale thereto over all the other creditors whatsoever; and petitioner prays for all such further, other, and different and general relief as in equity and good conscience it may be entitled to.

LONDON TRUST COMPANY, LIMITED,
By CHARLES SEYMOUR, *Solicitor.*

CHARLES SEYMOUR, *Solicitor.*

Endorsed: No. 705. C. M. McClung & Co. *et al. vs.* The Embreeville Freehold Land, Iron and Railway Co., Limited, *et al.* Petition. London Trust Company, Limited. Let this petition be filed. Jno. P. Smith, chancellor. Filed September 18th, 1894 W. F. Young, C. & M. Charles Seymour, solicitor.

Petition of Clarke & Reid, Trustees.

In the Chancery Court at Jonesboro, Tennessee.

C. M. McClung & Co. *et al.*
vs.
The Embreeville Freehold Land, Iron and Railway Company (Limited) *et als.* } No. 705.

To the Honorable John P. Smith, chancellor:

Your petitioners, Andrew Clarke & Thomas Reid, respectfully show to the court:

I.

That the above-styled cause is pending in the above-styled court as a general creditors' bill, and order has been made that all persons having claims against the defendant Embreeville Freehold Land, Iron & Railway Company or its property present the same in this court and in this cause, and in compliance therewith your petitioners come and present the following claims:

II.

On the 16th Jan., 1890, James Gordon Miller, of England, being the owner of the property now and heretofore known as the Embreeville Iron Works property, and described in Ex. "A" to the amended bill in this cause, duly conveyed the same by deed to Thomas Clarke, Andrew Clarke, and Thomas Reid, all of Great Britain, to have and to hold unto them, their heirs and assigns, to their own proper use, benefit, and behoof forever, yet subject to purchase-money liens resting thereon as incumbrances and amounting to about one hundred & seven thousand five hundred dollars ($107,500), with interest accrued thereon, making in all nearly one hundred and ten thou-

sand dollars ($110,000), to secure which the vendor's lien was specially reserved in the face of said deed, as appears in said Ex. "A."

The portion of the purchase price paid or secured to be paid to said James Gordon Miller in the form of debentures, forming a part of the issue of one hundred and twenty thousand pounds (120,000) hereinafter named, other than the sum last aforesaid, was two hundred and fifteen thousand dollars ($215,000), thus making the purchase price of said Embreeville lands in debentures and cash proceeds thereof, of which the title was conveyed to said Clarke, Clarke & Reid, the sum of three hundred and twenty-five thousand dollars ($325,000).

III.

The purchase of said Embreeville lands was negotiated by certain persons then engaged in forming the Embreeville Freehold Land, Iron & Railway Company for the use and benefit of themselves and their associates and of said company, and the title thereto was vested in said Clarke, Clarke & Reid absolutely upon the face of the deed because of the confidence reposed in them by said purchasers and by the public of Great Britain and with the understanding and agreement that they should hold said title in trust, first, for the benefit of the holders of the debentures with which the purchase was made and of the persons contributing to the payment of the purchase-money of said lands, and, second, of said Embreeville Company, with the understanding and agreement that thereafter the trust should be particularly set out and solemn-y executed. Meanwhile the sums of money which had been advanced for the payment *pro tanto* of the purchase price had been evidenced by certain interim receipts and which it was agreed should stand upon the footing of purchase-money till secured by the formal declaration of trust.

IV.

Accordingly, on the 6th of March, 1890, the organization of said Embreeville Freehold Land, Iron and Railway Company having been perfected and all parties engaged in organizing said company and contributing money therefor having merged or then agreeing to merge their previous rights into said company, and the securities theretofore promised and on that day provided for, a certain indenture was made and executed between said company, of the one part, and the three trustees, Clarke, Clarke & Reid, aforesaid, of the other part, wherein and whereby said Clarke, Clark & Reid formally acknowledged and declared themselves to hold the title to said Embreeville lands as trustees for the use and benefit, primarily, of the holders of the debentures of said company then and thereafter to be issued, and, secondarily, for the use of said company. Said indenture is filed as Exhibit "B" to the amended bill in this case and is hereby referred to for fuller statement of said trust agreement.

And thereupon there was issued, for value received, to divers persons debentures of said company to the amount of six hundred thousand dollars ($600,000), of which amount two hundred and fifteen thousand ($215,000) were issued to persons holding said interim

receipts for so much money paid upon purchase price of said Embreeville land, and about one hundred and ten thousand dollars (110,000) additional were issued for the payment of the residue of purchase-money due as aforesaid for said lands under the conveyance by said Miller to said trustees. The remainder of the proceeds of said debentures was received by said company and employed in the improvement and development of said property and the operating of the business of said company.

And, as appears by said indenture, said trustees agreed to hold the title to said Embreeville property for the protection and security of said debenture-holders, and said company promised and agreed promptly to pay debentures and the c-upon interest regularly accruing thereon, and upon the failure of said company to make due payment of said c-upon interest it was stipulated in said indenture that the entire sum of said debentures so secured should be accelerated and become due, and thereupon said trustees should enter upon and take possession of said lands and sell and convert them at their discretion, or, if deemed proper, they might carry on the business of said company, either of which courses was to be taken primarily for the benefit of said holders of debentures, and out of the proceeds, either of sale or convertion or of operation of the business of said company, said trustees were to pay, primarily, after the expenses incident to said business or conveyance, to the holders of the debentures aforesaid the amount- due severally unto them, principal and interest; all of which will more fully and at large appear from an inspection of said indenture.

V.

At the filing of the bill in this case said trustees had conveyed a certain portion of said lands, embracing about 900 acres, to the Embreeville Company, and likewise a small portion of it to the railroad company for a right of way for said railroad over said lands.

Saving and excepting said two conveyances, said trustees have held and retained the title to the said lands for the security of said debenture-holders according to the terms of said indenture, and were so holding the same at the day *at* the bringing of this suit, except that one of them, to wit, said Thomas Clarke, had released, set over, and conveyed all his interest and titles in said lands to his said cotrustees, Andrew Clarke & Thomas Reid, and from the date of said conveyance said two trustees continued to hold and retain said title, as aforesaid, primarily for the benefit of said debenture-holders, with the residuary beneficial interest therein for said Embreeville Company, which had meanwhile gone into possession of said lands and were opening mines, building railroad and tramways, and has erected a blast furnace and buildings on said lands, and was engaged in the manufacture and sale of pig iron, and was otherwise improving and developing said lands and property.

VI.

Thereafter, to wit, on the 16 February, 1893, at the request of said Embreeville Freehold Land, Iron and Railway Company and in pursuance of action taken by the holders of existing debentures, said trustees, Andrew Clarke & Thomas Reid, after the resignation aforesaid of Thomas Clarke, consented and agreed to continue to hold said Embreeville lands and property for the use, benefit, and security also of the holders of new debentures, then to be issued by said company to the amount of one hundred and twenty-five thousand dollars ($125,000), the relation of which to the former debentures was then or was to be thereafter settled and determined by the consent of the holders of said original debentures; and said debentures were so issued by said company to the amount of one hundred and twenty-five thousand dollars ($125,000) for so much money received from the London Trust Company, and ever since the issuance of said debentures said Clarke & Reid, according to their said stipulation and agreement, have continued to hold title to said land for the security as well of said new debentures as of the original debentures issued as aforesaid.

The terms, condition, and stipulation of said holding are set forth in the second indenture of February 16, 1893, filed as Exhibit "C" to the amended bill in this cause, and petitioner refers thereto for a full statement of the terms and conditions of said holdings, from which it appears that upon default of said company in its payment of interest upon said new debentures or in other particulars therein specified it was stipulated that the entire amount of said debentures should be accelerated and forthwith become due.

VII.

Said company has made default for the period of three calender months in the payment of interest on said debentures, and a receiving order has been made in respect of the property of said company, and the same has become liable to be seized for taxes, and this court has made an order for winding up the affairs of said company as an insolvent corporation, and thus the entire amount of the debentures of said company so secured as aforesaid, principal and interest, have been accelerated and become due to the respective holders thereof and said property has become and is liable to sale for the satisfaction of the claims of said debenture-holders.

VIII.

Said original debentures were issued to diverse persons residing in Great Britain, and are now in the hands of a large number of individual holders, either by original issuance or transfer, as negotiable securities in due course of trade, which holders said trustees, though they do not and cannot name them all, are bound by the terms of said indentures and by their trust aforesaid to protect and defend. The second series of debentures is *in solido* held by the

London Trust Company of London, England, which claims said debentures (although last issued) to be first in right of satisfaction under the terms of said indentures.

And said trustees have been duly requested by said debenture-holders to exercise their duties as trustees for their protection and defence, and to have said lands so held by them as security for said debenture-holders sold and the proceeds thereof applied to the satisfaction of their claims, in such order as shall be made to appear to the court right and equitable.

IX.

Though petitioner Thomas Reid, trustee, has ceased to act as trustee for said debenture-holders and asked to be relieved, and thus of the original trustee- and title-holders said Andrew Clark is the only trustee still actively engaged in representing the interest and protecting the rights of said original debenture-holders, yet the title to said lands still remains in petitioners Andrew Clark & Thomas Reid jointly as trustees for said debenture-holders and said company.

X.

Petitioners are advised that inasmuch as the title to said property was originally taken by said Clarke, Clark & Reid for the benefit and protection of the persons advancing money for the payment of the purchase price aforesaid of said tract of land, and was by them so held upon trust agreement until the making of said indenture of 6 March, 1890, said persons so contributing to the payment of the purchase-money have an equity in said land under said legal title prior to that of said Embreeville Company and all its creditors, of whatever nature or kind.

Also that the persons contributing money to discharge the vendor's lien retained in the face of the deed of said Miller to said trustees have likewise a prior equity in and to said land over said company or any of its creditors, and by subrogation are entitled to be substituted to the lien so discharged by the money so contributed by them for that purpose to the amount of said purchase-money incumbrance.

Also that as debenture-holders the persons contributing the money aforesaid for the payment of the purchase price of said land, and also for the purpose of developing and improving said land, for which they received the debentures of said company under the indenture aforesaid of March, 1890, as creditors of said company have under the terms and stipulations of said indenture a prior equity and lien upon said lands over any other creditors of said company and the right to demand because of said indenture of trust for their benefit made by the holders of the legal title of said lands that they shall be first satisfied out of the proceeds of the sale thereof to the full amount of the original issue of said debenture, to wit, one hundred and twenty thousand pounds (120,000), equal to six hundred thousand dollars ($600,000).

Also that the holders of the debentures issued in February, 1893,

to the amount of twenty-five thousand pounds (25,000), one hundred and twenty thousand dollars ($120,000), by reason of the said indenture of trust made by said company with said trustees and the title-holders of said lands have a prior right of satisfaction out of the proceeds thereof over any creditors of said company who have not contracted with said trustees or title-holders or given them notice of any alleged claim or lien upon said land under any contract with said Embreeville Company, as required by law in such cases, whether said creditors be resident of Tennessee or of any other State.

And that generally the holders of all said debentures of both classes, whatever may be their relation to each other under the terms of said indentures or of any other contracts made *inter sese* because of the contract and agreement made therefor between said company and said trustees as holders of legal title, have prior rights and claims, both in law and equity, over any creditor contracting only with said Embreeville Company and having no contractual relation with the trustees as holders of said legal title.

Prayer.

The premises considered, petitioners pray that this petition be filed as an intervention by them in behalf of all of the debenture-holders of both classes hereinbefore mentioned; that notice thereof be given according to the course and practice of this court and the special orders in this cause; that said debenture-holders, any *are* all of them who may choose to avail themselves of this right, be allowed hereunder to prove before the master the amount and nature of their respective claims; that the relation and priority thereof as between themselves and all the other parties to this suit and petitioners' in this cause be determined and adjudged, whether growing out of and resting upon said debentures and indentures of trust or out of the original understanding and agreement whereby money was contributed by them or their privies to the payment of the purchase price or the discharge of the vendor's lien upon said lands; that said debenture-holders be declared to have a first right, equity, and lien in and upon said property prior to said Embreeville Company and all creditors claiming solely under contract with it, and *and* a prior right to the proceeds of sale thereof over all said creditors of said company; and if the petitioners have in any way mistaken their remedy, they pray for all such further and different relief as in equity and good conscience they may be entitled to, and for general relief.

ANDREW CLARKE,
THOMAS REID, *Trustees*,
By H. H. INGERSOLL, *Sol'r.*

INGERSOLL & PEYTON, *Sol'rs.*

STATE OF TENNESSEE, }
Knox County. }

This day personally appeared Henry H. Ingersoll, solicitor for petitioners, and made oath in due form of law that the statements in the foregoing petition contained are true to the best of his knowledge and belief.

HENRY H. INGERSOLL.

Sworn to and subscribed before me this 27 day of July, 1894.

[Seal of A. E. Broyles, Knox County.]

A. E. BROYLES,
Notary Public.

I am surety for the costs of the foregoing petition.
27 July, 1894.

CHARLES SEYMOUR.

Endorsed: No. 705. Petition of Andrew Clarke and Thomas Reid, trustees. C. M. McClung & Co. *vs.* Embreeville Freehold Land, Iron & Railway Co., L'd. Filed July 28, 1894. W. F. Young, C. & M. Ingersoll & Peyton, sol'rs.

C. M. McCLUNG & Co. *et al.* }
vs. } Creditors' Bill.
E. F. L., — & R'Y Co. *et al.* }

The Hull Coal & Coke Co., by its sol's, moved the court for leave to so amend its petition filed herein on April 24th, 1894, as to charge that amount of coke stopped in transit upon which it claims specific lien because of such stoppage was 884 and $\frac{8}{4}$ tons, of the value of $1,486.36, and that the other deliveries were $1,247\frac{1700}{2000}$ tons, of the value of $2,096.51 ($2,096.51).

And the court, being of such opinion that such amendment may be properly made, doth allow said motion, and the amendment is accordingly made, and on motion of C. G. Blake, Rogers, Brown & Co., and the Hull Coal & Coke Co. they are permitted to so amend their several petitions as to allege that the acts of the legislature of Tennessee giving special preference to citizens of said State over citizens of other States is in contravention of clause one, section 2, article 4, of the Constitution of the United States.

And upon application of def't Embreeville F. L., I. & R'y Co. it will be allowed to take further proof upon the subject-matter of amendment above asked.

Findings of the Chancellor.

C. M. McClung & Co. *et al.*
vs.
Embreeville Freehold Land, Iron & Railway Co. *et al.*
} General Creditors' Bill.

Questions presented for the determination and opinion thereon.

I.

Upon the demurrer and motion to dismiss petition of Clark and Reid, filed Jan'y 28, 1894—

I am of opinion that under the general order allowing claims to be filed the petitioners might present the claims and rights of debenture-holders, notwithstanding the answer previously filed. The answer is defensive to the allegation in the amended bill to the effect that the trustees took the land in trust for the land company. The petition asserts claims of the debenture-holders.

The demurrer to the petition of London Trust Company and motion to dismiss are, in my opinion, not well taken and made and are disallowed.

II.

As to the rights of debenture-holders under the title vested in Clark, Reid and Clark by the deed of Miller and wife of Jan'y 16, 1890, and the subsequent declaration of trust of March 6th, 1890, I am of opinion that (in this record) the debenture-holders are simple contract creditors under contracts made with the London office to be executed in London, and that their — trust gives them no rights of priority as against other creditors dealing with the company as domiciled and doing business in Tennessee, to be satisfied out of the assets within the jurisdiction of this court.

By the deed of Jan'y 16th, 1890, the trustees were seized with *with* the naked legal title to the property therein conveyed (unencumbered with a vendors' lien, afterwards discharged by the company) and all the beneficial interest in the property of every kind vested in the Embreeville Freehold Land, Iron and Railway Co., and any contemplated trust in favor of debenture-holders or subscribers or proposed subscribers for debentures was unexecuted and undeclared and vested no rights in them as against other creditors of the Embreeville Company.

The debentures issued were based upon and must stand, if at all, upon the declaration of trust of March 6th, 1890.

This trust contains provisions reserving such benefits to the company and so exempting the trustees from responsibility as to tend to hinder and delay creditors and render the whole instrument void.

The right was reserved to the company to use the property conveyed as it might see fit, and to sell, lease, and otherwise dispose of the premises, and the trustees were, without question, to convey.

All the rights and powers of an absolute owner were reserved to the company. I can see no reason why provisions as to real property should be held valid when similar conditions in a trust or personalty would render the instrument void.

Under the rule in Bank *v.* Ebbert (9th Hisk., 153) the deed is void.

It appears in this record that the Embreeville Company was in possession, dealing with the property as its own, and, priority of satisfaction being given to residents of Tennessee by statute, I am of opinion that if the trusts were valid registration was necessary.

It appears that registration was withheld for a fraudulent purpose, and if the debenture-holders entrusted this duty to the company they are bound by their fraudulent acts.

III.

For the same reasons the London Trust Company must yield to other creditors.

Its contract is for a prior lien under a trust to be executed, but not in fact done. Its contract is with the London office and to be there executed; only the security was American.

The possession of the property remained unchanged and *and* the rights and privileges under the former trust declaration continued in the company, and these tended to hinder and delay creditors.

This paper was likewise fraudulently withheld from registration.

IV.

The claim of the Pittsburgh Iron & Steel Engineering Company was asserted by bill filed Feb'y 25, '93.

It appears that it was a friendly suit brought to preserve the statutory lien, and after proper entries put away in the master's safe by consent and request of both parties. I find nothing to the prejudice of other creditors in this. The lien was preserved and will be declared and enforced against the proceeds of the realty herein.

V.

Under the act of 1877, I am of the opinion that creditors residents of Tennessee are entitled to priority of satisfaction out of the assets of the company (after deducting enough of the real assets to discharge the lien debt of the Pittsburgh Iron and Steel Engineering Co.) as against other creditors citizens of sister States of the United States.

VI.

As to the claims of Rogers, Brown & Co. to be reimbursed, as a prior lien, the sum loaned the company and used in paying laborers after the assignment, I am of opinion that this cannot be sustained. The loan was obtained before the assignment.

The iron Co. was not a quasi-public corporation affording facilities and advantages directly to the public, and the rule applying to such corporations does not apply here.

As to coke stopped in transit, this right was preserved by the agreement of July 6th, 1893, in favor of Hale Coal & Coke Co. and C. G. Blake. H. H. Kirkpatrick'- depo., filed May 9th, 1894, fixes amount. (See question 2.)

Calculations can be made and this paid out of proceeds of personalty. On cross-examination it appears that one-half of the coke was rec'd the first of June; but for the agreement, I think the master right as to loss of the right of stoppage in transit.

VII.

As between non-residents of Tennessee, but citizens of the United States, and citizens of other countries, I find no precedents.

The presumption is, nothing to the contrary appearing, that under the laws of Great Britain her subjects will be accorded priority of satisfaction out of assets, and therefore before sharing here they should show either no assets there or the exhaustion of such assets and the sum rec'd, and this with more force true as to all contracts made with reference to the home office.

Creditors contracting with the Embreeville Co., as located and doing business in Tennessee, who are citizens of States or countries other than Great Britain will share ratably in the assets to be administered here next after the Tennessee creditors, Pittsburgh Co., and coke stopped in transit.

This coke was an asset that went into the receiver's hands after suit by consent of the parties.

VIII.

As between residents of Great Britain, those contracting with reference to the home office will yield to the prior right of such as contracted with reference to the Tennessee business.

And remainder will go to residents of Great Britain generally and be prorated.

(7 & 8 dispose of Embreeville Co.'s exception to claim of Lakeman & others and compl'ts' exceptions to same claims.)

IX.

As to the validity of the trust assignment made by Love, general manager, while the agreed orders admitting insolvency and taking the bill as general creditors' bill render any adjudication immaterial (the assets being sufficient to pay Tennessee creditors), yet I yield to the request for an opinion and hold that the deed is invalid.

It was an act of insolvency by an agent not specially empowered to do the particular act. The act of 1877 gives Tennessee creditors priority of satisfaction, and a mere agent without that power specially delegated by resolution of the company may not prefer some of such preferred creditors as against others.

I do not regard the doctrine sound which holds that an insolvent corporation may give preference among creditors, especially when the act of preferring creditors is one of insolvency which impresses the assets with a trust.

After an act of positive insolvency one creditor may not obtain an advantage over another, and I fail to see why — such act the corporation itself may give advantages.

Such, to my mind, is the *logician* conclusion from the rule announced in 3 Cooper Tenn. Chy., 504; 6 Lea, 569; 4 Cold., 484; 7 Lea, 660.

The exceptions taken by Dosser Bros. (which I fail to find) raises the question of the Embreeville Co. to 5 % discount on labor claims paid by them.

I am of opinion that the exception is well taken, and that time of payment was of the essence of the contract.

X.

Upon Love's claim, I am of opinion that he is entitled to compensation (salary) to the date of the order sustaining the general creditors' bill.

This terminated his service. He was no longer general manager. Then, under his contract, he is entitled to one year's salary as liquidated damages.

I regard the authorities cited as conclusive.

Love's 2nd execution is disallowed.

XI.

Findings on other exceptions will be found noted on the back of the exceptions or on the margin.

Endorsed: On application of complainants, findings one to ten may be embodied in the decree, making verbal changes so as to say, "The court is of opinion and finds and decrees," &c. Jno. P. Smith, chancellor.

Final Decree.

C. M. McCLUNG & COMPANY
vs.
THE EMBREEVILLE FREEHOLD LAND, IRON & RAILWAY COMPANY, LIMITED, *et al.*
&
THE PITTSBURGH IRON & STEEL ENGINEERING COMPANY
vs.
THOS. REID *et al.*

Nos. —.
Consolidated Causes.

This consolidated cause came on to be heard upon the demurrers to and motions to dismiss the petitions of Clark, Reid & Clark, filed July 28th, 1894, and of the London Trust Company, filed on the 18th Sept., 1894. Argument of counsel having been heard and the court being of the opinion that said demurrers and motions are not well taken and made, the same are overruled and disallowed.

And thereupon this consolidated cause came on to be regularly and finally heard on this the — day of ——, 1895, before the Honor-

able John P. Smith, chancellor, etc., upon the pleadings, exhibits thereto, judgment *pro confesso* heretofore regularly taken against all of the defendants failing to answer, and all such pleadings, &c., as were put at issue by former order in the cause, the proofs and all proceedings heretofore had, and particularly the report of the master filed in this cause on the 7th of January, 1895, and the several exceptions to said report, and argument of counsel thereon; on consideration of all which the court, pursuant to the opinion filed herein and hereby made part of the record in this cause, doth order, adjudge, and decree as follows:

That the exceptions filed by Dosser Brother- to the report of the master allowing the Embreeville Company a discount of 5% upon all labor claims paid by them is well taken and is hereby sustained.

Other exceptions are disposed of as follows:

Of complainants', the first, second, third, and fourth are allowed; the fifth is reserved, and the sixth and seventh are overruled.

Of the Embreeville Town Company, the exception is allowed.

Of the London Trust Company and Trustees Clark & Reid, the exceptions are overruled.

Of C. C. Wilson and A. L. Estell, the exceptions are overruled.

II.

That the defendant W. J. Love is entitled to his salary, according to the terms of his contract, up to June 30th, 1893, the date of the order sustaining the bill in this cause as a general creditors' bill, and that he is further entitled to one year's salary as liquidated damages for the breach of the contract existing between him and the defendant The Embreeville Company, and it is therefore decreed that the first exception filed by the defendant Love is hereby sustained, and $5,000.00, together with interest thereon from Jan'y 1st, 1894, is allowed and decreed as such liquidated damages. The second exception of said Love is hereby disallowed.

III.

That the trust assignment made by the defendant Embreeville Company to the defendant S. J. Kirkpatrick, trustee, bearing date 15th June, 1893, was a positive act of insolvency upon the part of the defendant The Embreeville Company, was executed by an agent not specially empowered so to do, and was and is absolutely void and vested no rights in the beneficiaries attempted to be secured thereby.

IV.

That the complainant The Pittsburgh Iron & Steel Engineering Company had a mechanics' and furnishers' lien upon all of the real estate of the defendant Embreeville Company and the improvements thereon to secure the payment of all work done and materials furnished by it under the contract existing between said company and the Embreeville Company in erecting the furnace and making the improvements upon said property, as specified in the said Pittsburgh

Company's bill, and that said Pittsburgh Iron & Steel Engineering Company have the right to have their said claim for said work and labor done and materials furnished paid in full out of the proceeds arising from the sale of the real estate heretofore sold in this cause.

V.

That under and by virtue of the act of 1877, hereby adjudged constitutional, all of the creditors of said Embreeville Company residing in the State of Tennessee are entitled to priority of satisfaction out of the assets of the defendant The Embreeville Company (after the payment out of the proceeds of the real estate of the claim of the Pittsburgh Iron & Steel Engineering Company) as against the other creditors of the said Embreeville Company who are resident and citizens of other States of the United States or other countries.

VI.

That the other creditors of the Embreeville Company who are citizens of other States of the United States and who contracted with the said Embreeville Company as located and doing business in the State of Tennessee are entitled to share ratably in the assets of the defendant Embreeville Company, being administered in this cause next after the payment of the Pittsburgh Iron & Steel Engineering Company and the Tennessee creditors, except the coke stopped *in transitu*, which is to be disposed of as hereinafter decreed.

VII.

That the debenture-holders claiming under the title vested in defendants Clark, Reid & Clark by the deed of Miller & wife of Jan'y 16th, 1890, are simple contract creditors under a contract made with the London office of the Embreeville Company, and that neither said decree of Jan'y 16th, 1890, nor the said declaration of trust of March 6th, 1890, vested in said debenture-holders any right of priority as against other creditors dealing with said company as domiciled and doing business in Tennessee; that said declaration of trust — March 6th, 1890, was fraudulent in law and void; that the same was withheld from registration in Tennessee for a fraudulent purpose, and, having been registered in Tennessee prior to the filing of the bill in this cause, was ineffectual and vested no rights in the debenture-holders for want of registration even if the same had been valid, and that said debenture-holders are not entitled to share in the assets of the Embreeville Company being administered in this court and cause until after the payment in full of all the Tennessee creditors, the Pittsburg Iron & Steel Engineering Company, creditors residing in other States of the United States and resident of Great Britain contracting with reference to the Tennessee business.

VIII.

That the contract made between the Embreeville Company and the London Trust Company and the trustees, Clark, Reid & Clark, providing for a trust to be thereafter executed, was in fact never executed, was a contract made at the London office of the said Embreeville Company, was never registered in Tennessee until after the filing of the bill in this cause, was fraudulent and void by virtue of its terms as well as for want of registration, and vested no right whatever in the London Trust Company, and said London Trust Company is not entitled by virtue of said contract to share in the assets of the Embreeville Company being administered under the orders of this court in this cause until after the payment of all debts due to the Tennessee creditors, Pittsburg Iron & Steel Engineering Co., other creditors residing in other States of the United States, and those in Great Britain contracting with reference to the Tennessee business.

IX.

That the petitioners Rogers, Brown & Company are not entitled to have reimbursed to them as prior lien the sum advanced by them to the Embreeville Company and used by said company in paying laborers after the assignment made by said Embreeville Company, said advancement having been in fact obtained before said assignment, nor have they any right of subrogation to the liens or priorities that existed in favor of the labore-s whose claims were paid with and out of the advancement made said company by them.

X.

That the petitioners The Hull Coal & Coke Company and C. G. Blake are entitled to the proceeds of the coke stopped *in transitu* by virtue of the agreement made in this cause on July 6th, 1895, and said proceeds of said coke will be paid to said petitioners out of the proceeds of the personalty sold in this cause.

The court is of opinion, and doth so adjudge and decree, that said C. G. Blake & Hull Coal & Coke Company are not entitled to any lien, equitable or otherwise, for material and supplies furnished within three months before insolvency and which entered into the production of the iron. The defendant company is not a quasi-public corporation affording facilities directly to the public, and the rule insisted upon does not apply.

XI.

That the following creditors of the Embreeville Company, all of whom reside in Tennessee, have and recover of the said Embreeville Freehold Land, Iron & Railway Company the several amounts hereinbelow mentioned, and that said several amounts bear interest from the 6th day of November, 1894, the date of computation in the master's report:

C. M. McClung & Company	$2,049 94
Cowan, McClung & Company	1,506 11
W. B. Lockett & Co	2,158 96
Hazen & Lotspeich	149 48
Knoxville Provisio- & Sugar Co	1,032 99
H. C. Jackson	149 91
H. C. Jackson and others	128 91
I. E. Reeves, receiver	42 53
First National Bank of Johnson City	3,110 27
Jonesboro Banking & Trust Company	8,008 14
Blair Brothers	315 51
Garber Brothers (Jones, assignee)	424 46
Dent Mining Company	6,347 13
Dosser Brothers	5,351 57
Ogden Brothers & Company	143 10
Haynes Brothers	17 52
C. F. Decker	26 21
C. K. Lide	6 23
T. J. Brown	14 45
Pioneer Coal & Coke Co	633 59
Biddle & Ellsworth	19 51
Sweetwater Mill Company	237 52
C. L. Rogers, assignee	578 88
Sterling Dynamite Co	69 26
Montague & Company	62 61
R. H. Dungan	64 00
J. P. White	107 52
Robert W. Blair	32 84
Lingenfelter & Kirchbaum	33 77
W. L. Martin	55 58
W. E. Bullock	271 01
L. W. McKenzie	149 65
C. C. Wilson	4,827 49
A. L. Estell	363 38
A. M. Wing	985 74
C. R. Love & Co. (Atlas engine works)	457 40
Greer Machinery Company	155 50
Buckeye Coal Company	1,699 71
H. V. Hart	29 14
James E. Deakins & others	76 39
Johnson City F. & M. works	568 58
(But the clerk & master will out of this last sum first pay the amount due the receivers from the Johnson City Foundry & Machine Co. under former orders herein.)	
H. H. Kirkpatrick	209 38
(If not heretofore paid.)	
W. J. Love	13,230 18
	56,230 18

XII.

That the Pittsburg Iron & Steel Engineering Compa[illegible] a corporation created under the laws of the State of Pennsylvania, have and recover of the said Embreeville Company the sum of $47,894.33, being the amount shown by report of the master as due to it for work and labor done and materials furnished, and that said sum bear interest from the 6th day of November, 1894.

XIII.

That the following creditors of the defendant Embreeville Company who reside in the States of Virginia, New York, Ohio, and Pennsylvania have and recover of the said Embreeville Freehold Land, Iron & Railway Company the several amounts hereinafter mentioned, as shown in master's report filed Jan'y 7th, 1895, with interest from Nov. 6th, 1894, the date to which the master has calculated interest thereon, to wit:

C. G. Blake	$10,869 72
Rogers, Brown & Company	15,505 93
Hull Coal & Coke Company	3,879 53
Julian Kennedy	5,225 25
Queen & Company	3 16
American Bridge & Iron Co.	6 30
Eimer & Amend	7 91
Williamsport Wire Company	9 55
Wilson Snyder Mfg. Company	55 74
Nathan Mfg. Co.	8 41
A. S. Cameron Steam Pump Works	10 86
Covington Machine Co	685 62
Fairbanks Company	121 23
	36,389 21

XIV.

That the following creditors of the Embreeville Company reside in Great Britain, and who contracted with said company in reference to the assets of said company in Tennessee, have and recover of said Embreeville Company the several amounts hereinafter mentioned, to wit:

Frank Crisp	$5,261 95

XV.

That the London Trust Company, a foreign corporation, have and recover of the Embreeville Company the sum of $133,779.16, which shall bear interest from the 6th day of November, 1895.

XVI.

That Clark, Reid & Clark for the use of the holders of debentures described in the declaration of trust of March 6th, 1890, have and recover of the Embreeville Freehold Land, Iron & Railway Company the amounts hereinafter to be shown by them under the leave given by former order in this cause, and that the following British claimants have and recover of said company the following sums respectively as of 6th of November, 1894, to wit:

Geo. W. Lakeman	655 35
Ashurst, Morris Crisp & Company	2,740 60
W. L. Brooks	90 86
Ardley & Company	19 39
F. Denton	52 42
F. C. Mathieson & Sons	33 95
Miss E. H. Robins	176 93
Bates, Hendy & Company	13 49
W. Alcock	15 59
Cash, Stone & Plumb	1,193 41
Alfred Bull	157 28
Lord Hampden	7,594 28
London R. Estate Co.	310 80
Hugh Fleming	1,223 06
Sir Andrew Clark	1,966 06
Bradbury, Wilkinson & Co	91 54
Sir Thomas Reid	1,966 06
United R. & F. I. Co	3,276 78
W. C. Prescott	6,429 10
Lord Conduroy	4,717 83
Ernest S. Inman	4,636 47
Union Mortgage Co	1,294 90
Commercial Bank of Scotland	37,349 71
P. McFadyen	2,481 46
J. Campbell Dick	2,854 06
Alfred Bull	2,854 06
	84,195 71

XVII.

First. It is finally decreed that out of the proceeds of the sale of the personal and real assets of the Embreeville Company now in the master's hands will be first paid all the costs of the cause not heretofore otherwise adjudged, and all the taxes, State and county, which had accrued and were a lien upon the property at the time of the sales made under the decree of this court.

Second. The master will next pay such compensation as may be hereinafter determined upon to Green & Shields and Deaderick & Epps for filing the general creditors' bill in this cause; also the compensation of the receiver and such compensation as may be allowed his solicitors, and to Kirkpatrick & Bowman for services performed under the order and direction of the chancellor in respect

to the real and personal assets of the estate for def't company, and all the expense incurred by the receiver in the discharge of his duties as such.

Third. He will next pay out of the proceeds of the real estate the claim of the Pittsburg Iron & Steel Engineering Company as herein decreed.

Fourth. He will next pay *pro rata* to C. G. Blake the sum of $505.65, and the Hull Coal & Coke Company or their solicitors of record the sum of $884.75, the amount of the proceeds of the sale of the coke stopped *in transitu*.

Fifth. He will next pay in full the claims of the creditors residing in Tennessee, as herein adjudged.

Sixth. He will next pay the claims of the creditors residing in the other States of the United States, as herein decreed.

Seventh. He will next pay the claims of the parties residing in Great Britain who contracted with reference to the assets in Tennessee.

Eighth. He will next pay the claim of all debenture-holders and other creditors residing in Great Britain, but will observe the priority agreed upon by the parties thereto in favor of the London Trust Co.

XVIII.

And liens are hereby declared upon the foregoing several recoveries in favor of the respective solicitors of record representing the several judgment creditors herein for the security of their respective fees for services rendered in this cause.

XIX.

And it is further ordered by the court that George Babington Parker, purchaser of realty sold in this cause, be allowed to pay into court, in advance of the maturity of his purchase-money notes, any sum he may wish thereon, not exceeding $50,000, which the master shall receive and credit upon his said notes.

And the clerk will pay forthwith out of the proceeds of realty the sums decreed in favor of the Pittsburg Iron & Steel Engineering Company, and also to the Hull Coal & Coke Company and C. G. Blake the amount decreed for coke stopped *in transitu* by them, out of proceeds of personalty, notwithstanding appeals herein prayed, and such sums may be paid to solicitors of record.

And any sum which may remain on hand out of the present funds, after paying and retaining for costs and the foregoing sums, the master will lend out (nothwithstanding the appeals herein), in such sums as he may deem prudent, to solvent persons, on undoubted security, giving preference, to the amount of their several claims, to Tennessee creditors or their assignees in this cause who may apply before 20 June prox'o for the same.

And any sum hereafter paid in by said purchaser the master will loan out in like manner, giving preference to Tennessee creditors or their assignees, for ten days only after the same is received by him.

The clerk & master may and shall lend the said creditors or their assignees the amount of their respective claims, upon bonds certified to be good and solvent by the clerk & master at Knoxville & Chattanooga, Tennessee, after sworn examination of proposed sureties attached to such bonds. When the master is in doubt he may ask further instructions from the court, and parties borrowing — this clause may transmit their notes and receive the money through their solicitors of record.

XX.

Petitioners Rogers, Brown & Company except to so much of the foregoing decree as adjudges that they are entitled to no subrogation and priority of lien for advances made by them to the defendant company.

Petitioners C. G. Blake and the Hull Coal & Coke Company except to so much of the decree as adjudges them not entitled to an equitable lien for material and supplies furnished within three months prior to insolvency of the defendant company and which entered into the production of iron on hand when the receiver was appointed and went into his hands.

Julian Kennedy, C. G. Blake, Rogers, Brown & Company, and Hull Coal & Coke Company except to so much of the decree as adjudges the act of 1877 constitutional and under said act decrees priority to Tennessee creditors over them.

XXI.

And from such portions of the foregoing decree as adjudicates priority of right to and satisfaction out of the real assets of the defendant Embreeville Freehold Land, Iron & Railway Company (Limited) in favor of general creditors of said company residing in Tennessee and in the United States and those residing in Great Britain, contracting with reference to the Tennessee business, over the rights of Clark, Reid & Clark, trustees, and of the holders of debentures of said company described in the indentures of trust filed in this cause, and that said indentures are fraudulent and void and were fraudulently withheld from the registration, and that said trustees and debenture-holders have no right or title in or to said real estate prior or superior to the other creditors above described, and are not entitled to share in the real assets of the company in this court until after the payment in full of all the general creditors residing in Tennessee and in other States of the United States and in Great Britain who contracted with reference to Tennessee business, and postponing them to said general creditors in the order of satisfaction of their claims, as set out in sections V, VI, VII, VIII, XVII, but not the priority decreed in favor of the Pittsburgh Iron & Steel Engineering Company in section IV, defendants Clark, Reid & Clark, trustees, and petitioner The London Trust Company pray an appeal to the next term of the supreme court of Tennessee, to be held at Knoxville on the second Monday of September next, for the eastern district of Tennessee, which is granted, said appellants having given bond therefor as required by law.

And by consent it is ordered *by* the clerk & master in making out transcript of record for filing in the supreme court on this appeal shall omit all intervening petitions, exhibits, and proofs thereon (except those of Trustees Clark, Reid, The Hull Coal & Coke Company, C. G. Blake, Rogers, Brown & Company, Julian Kennedy and other American creditors non-residents of Tennessee, The London Trust Company and Bradbury Wilkinson & others, which shall be included). He will also omit all proof taken solely in support of the several claims of complainants, and all the reports of the receivers and all masters' reports upon the receivership and special matters and proofs and exhibits pertaining solely thereto, and all other petitions and proofs on matters of contention with the receiver and growing out of the receivership, except that the master shall copy into the transcript the total amount of all sales of personalty, also realty; the total Tennessee indebtedness: the total of the indebtedness outside of Tennessee, but in the United States; the total of the sales of trust property and total of debts secured by trust deed to Kirkpatrick, and all duplicate copies of deeds, indentures, and other documents, interrogatories and other papers in the cause, but he will include in transcript all principal pleadings, exhibits, and proof thereon, and all copies of deeds, indentures, and other documents and proofs relating to the subject of the appeal herein prayed, and all other papers and parts of record which solicitors for complainants or appellants may specially request before completion of transcript.

And the clerk & master will not copy in the transcript any of the documents and statements exhibited with the English depositions in print or on blanks except the stock and bonds circulars or prospectuses, but will send up in lieu thereof the originals on the file herein.

And the petitioners, under the petitions of "Bradbury, Wilkinson & Co. *et al.*" and "Geo. W. Lakeman *et als.*," pray an appeal to the supreme court of Tennessee, at Knoxville, from the decrees herein in so far as they grant priority to claims of American creditors over their claims; and said appeal is granted by the court, and said appellants are by consent allowed 30 days within which to execute appeal bond or bonds.

But said last-named appellants limit their said appeal so as not to interfere with the priorities decreed to the Pittsburgh Engineering Works, and to Hull Coal & Coke Company and C. G. Blake by reason of coal stopped *in transitu*, and so as not to interfere with payments on said claims pending the appeals.

C. M. McClung & Co. *et al.*
vs.
Embreeville Freehold Land, Iron & Railway Company, Limited, *et al.*
} Appeal from Jonesboro Chancery Court.

The original bill in this cause was filed June 20th, 1893, in the chancery court at Jonesboro, Washington county, Tenn., by complainants Cowan, McClung & Co. & others, creditors of the defend-

ant company, in behalf of themselves and all other creditors of the same, against said Embreeville Freehold Land, Iron & Railway Company, Limited (a foreign corporation, organized under the laws of Great Britain, but domesticated under the laws of the State of Tennessee, and having an office in Washington county, Tenn.), and a number of other parties, resident and non-resident, and among them Wm. J. Love and S. J. Kirkpatrick, of said last-mentioned county.

The complainants named set up claims in various amounts for goods sold to said Embreeville Company, which, as alleged, was operating an iron furnace at Embreville, in Washington county, and charge that said company was the owner of a large body of land (some 47,000 acres) lying in Washington, Unicoi, and Greene counties, Tenn., and of the said furnace situated thereon, and also of a large lot of personalty, consisting of iron, iron ore, coke, &c., at Embreville; that one Wm. J. Love, as general manager of said company, had, on the 15th June, 1893, made *as* assignment or deed of trust, conveying to defendant S. J. Kirkpatrick all the personalty of every kind and description belonging to said company, to secure certain claims due to the hands of said defendant and certain other alleged to be due to the Dent Mining Company, Wm. J. Love, & others, who are named. The trust is filed as an exhibit to the bill.

It is further charged that said Wm. J. Love was not legally authorized to make said trust; that the company was insolvent at the time it was made; that it was made with the view of hindering and delaying complainants and to secure certain favored creditors, and was fraudulent, &c.

The parties named as defendants are made such, and the prayer is that the bill be taken as a general creditors' bill; that all creditors be allowed to come in and prove their claims, and that priorities be determined; that said Embreeville Freehold Land, Iron & Railway Company be declared insolvent; that a receiver be appointed, &c., and that said company be wound up as an insolvent under the orders of the court; that said trust to Kirkpatrick be declared fraudulent and void and set aside, &c.

See vol. "1" of Record, pp. 1–21.

On 28th June, 1893, the said complainants filed an amended bill against the same parties named in their original bill and certain new parties, to wit, "Thomas Clarke and Thomas Reid, residents of Scotland, and Andrew Clark, a resident of England, trustees."

Herein briefly the complainants set out the filing of their original bill and the allegations thereof and the relief sought, and then proceed to show that although, as stated in said original bill, said Embreeville Freehold Land, Iron & Railway Company is the owner of the tract of land of 47,000 acres mentioned and described in section "11" of said bill, upon which the iron furnance is situated, "nevertheless that the naked legal title to said tract of land is in said new defendants, Thomas Clarke, Andrew Clark, and Thomas Reid; that said tract of land was purchased by and for the said Embreeville Freehold Land, Iron & Railway Company, to use in its business as a manufacturing corporation, and was fully paid for with

the money of said corporation, but for some reason unknown to your orators the deed therefor from the grantors, James G. Miller and Francis Laura Miller, his wife, was executed to the said Thomas Clarke, Andrew Clark, and Thomas Reid as trustees. Said deed bears date January 16th, 1890, and is registered in the register's office of Washington county, in Book of Deeds No. 57, at page 647 *et seq.* Said deed upon its face shows that said grantees held said land in trust, but for whom or for what purpose is not expressed. It recites that a large sum of purchase-money upon said lands remains yet unpaid, but your orators are further informed * * * that all said purchase-money has all been fully paid and satisfied."

"Said defendants Thomas Clarke, Andrew Clark, and Thomas Reid took said deed and hold said property in trust for the use and benefit of the said Embreeville Freehold Land, Iron & Railway Company, and now so hold the title, and are naked trustees for that purpose."

The amended bill also reiterates the charge that said Embreeville Company is a foreign corporation, chartered and organized under the laws of Great Britain, but domiciled in the State of Tennessee by virtue of the acts of the General Assembly of 1877, chap. 31, and the amendments thereto, and that pursuant to said acts did, in the year 1890, file a certified copy of its charter in the office of the secretary of state, at Nashville, and caused an abstract to be duly registered in Washington county, Tennessee.

It is also charged that complainants are residents of Tennessee and were such when the debts sued upon were created, and claim that by virtue of the statute of Tennessee, and especially under which said defendant corporation has been doing business, the complainants, together with all other Tennessee creditors, are entitled to priority of payment of their debts out of the assets of said corporation, and superior to the claims of all other creditors who do not reside in Tennessee and did not so reside when their debts were created.

Complainants rely upon all the allegations and charges of their original bill and pray that the parties named be made defendants to the amended bill; that upon the hearing the defendants "Clarke & Reid be declared to hold the title to said lands in trust for the said Embreeville Freehold Land, Iron & Railway Company, Limited, and that said lands be sold as the property of said corporation and the proceeds distributed to its creditors in this proceeding," and for general relief, &c.

See Record, vol. 2, pages 76–89.

On November 17th, 1893, "The Embreeville Company, S. J. Kirkpatrick, as trustee, and Andrew Clarke and Thomas Reid, also trustees," filed answer jointly to the original and amended bills of complainants. It is found in full in vol. 1 of Record, pages 34 to 49.

I-s sub*ta*tance, in so far as it is necessary to give it, in view of the questions presented in this court, is, the company admits itself a foreign corporation, but domiciled under the laws of Tennessee, with its principal office at Embreville, Washington county, Tennessee,

engaged in the business alleged in the bill; that Kirkpatrick is resident in said county and Clarke & Reid residents of Great Britain.

The company further admits that it is owner of the personal property mentioned in the original bill, "and is also the equitable owner of a furnace plant" in Washington county, "which, with its equipment, cost respondent company and is now of the value of $250,000;" and is in like manner the owner of a body of timber and mineral lands situate "in Washington, Unicoi, and Greene counties," comprising a large number of adjoining tracts, estimated to contain 47,500 acres and approximately worth $500,000. The title to all of said real estate is vested in respondents Clarke & Reid, in trust for respondent company and for the holders of certain debentures issued by said company, but it is not true, as averred in the bill, that the deed of Miller & wife to said trust respondents declares said trust or vests said title in said respondents as "trustees" specifically. Sir Richard Clarke, one of the vendees named in said deed, withdrew from said trust, leaving respondents as sole trustees.

The company admits an indebtedness to complainants; admits the execution of the deed of trust to Kirkpatrick 15th June, 1893, but denies that it was for the purpose charged; denies that it was fraudulent; denies that it included all the personal property of the company; denies insolvency, or that it had committed any act of insolvency; denies complainants' right to seize its property and have same placed in hands of the court, and denies their right to have its property and effects administered as an insolvent corporation; avers the validity of the assignment or deed made by Love, general manager, and then makes a statement of the business the company had been doing, the hands employed, its output of iron, the stringency of the times, &c., the difficulty of commanding ready funds to meet current expenses, &c. The company proceeds to show what personalty it owned and the value of its assets; it denies that it was about to otherwise encumber its property, as charged; denies that a case is made for a receiver; denies all charges of fraud in law or fact; asks that complainants' bill be not allowed as a general creditors' bill, that receiver be discharged, and that the property conveyed in said trust deed be restored to said Kirkpatrick, trustee, and that the company be restored to the custody, management, and control of its property, affairs, and business, &c.

On the day of the filing said answer, 17th November, 1893, a permanent receiver was applied for before the chancellor, and the order of court recites that the pleadings were read, and that the objections made in the answer of the defendant corporation were withdrawn, and that by consent of said corporation, by its solicitors, the bill was sustained as a general creditors' bill "and stands as such to inure to the benefit of all creditors who may claim its benefit or come under it."

Vol. 2, page 89.

The clerk was directed to make the usual publication for creditors, &c., and the institution of separate suits was enjoined, &c., and at a later day, to which final action was postponed, and a permanent receiver was named.

The deed of Jan'y 16th, 1890.

The deed referred to in the amended bill from James Gordon Miller & wife to Sir Thomas Clarke and Sir Andrew Clark and Thomas Reid was made 16th January, 1890, and is found in Record, vol. 3, page 79.

It recites that for 5,000 pounds in hand paid by the parties of the third part (the said Clarks & Reid) the first and second parties (Miller & wife) had bargained, sold, and conveyed to said third parties 47,000 acres, more or less, lying in the counties of Washington, Green, and Unicoi, in the State of Tennessee (and more particularly described by reference to the former owners); "to have and to hold * * * unto said parties of the third part, their heirs and assigns, to their own proper use, benefit, and behoof forever," subject to the payment of certain vendors' liens reserved by parties selling to Miller, amounting to some 107 or $108,000.

On January 3rd, 1894—Record, vol. 3, page 142—there was a decree of the chancery court embodying a reference to the clerk & master to ascertain the creditors of the Embreeville Company, the character of their claims, &c., who resident and who non-resident, and "ordering that all petitions and claims presented therewith by creditors heretofore and by creditors hereafter in this cause shall stand and be taken as though traversed and denied by answer, and each and any creditor filing a claim herein is hereby allowed to make any defense, by pleading and proof of the claims of any other creditor, which he may desire to so contest," -c.

Record, vol. 4, pp. 227-244.

On January 28th, 1894, Andrew Clark and Thomas Reid filed their petition, reciting the pendency of the suit as a general creditors' bill, the order of the court directing all creditors to present their claims, the execution of the deed of January 16th, 1890, to them by James Gordon Miller and the consideration thereof; "that the purchase of said lands was negotiated by certain persons engaged in *the* forming the Embreeville Freehold Land, Iron & Railway Company for the use and benefit of themselves and their associates and of said company, and the title thereto was vested in said Clark, Clarke & Reid absolutely upon the face of the deed because of the confidence reposed in them by said purchasers and by the public of Great Britain and with the understanding and agreement that they should hold the title in trust, first, for the benefit of the holders of the debentures with which the purchase was made and of the persons contributing to the payment of the purchase-money of said lands, and, second, of said Embreeville Company, with the understanding and agreement that the trust should thereafter be particularly set out and solemnly executed." "Meanwhile" (the said petition proceeds) "the sums of money which had been advanced for the payment *pro tanto* of the purchase price had been evidenced by certain interim receipts, and which it was agreed should stand upon the footing of purchase-money till secured by the formal declaration of trust."

It is further in said petition alleged that on March 6th, 1890, the organization of said Embreeville Company having been perfected

and all parties engaged in organizing said company and contributing money therefor having merged or then agreeing to merge their previous rights into said company, and the securities theretofore promised and on that day provided for, a certain indenture was made and executed between said company, of the one part, and the three trustees, Clarke, Clark & Reid, of the other part, whereby said Clarke, Clark & Reid formerly acknowledged and declared themselves to hold the title to said Embreeville lands as trustees for the use and benefit, primarily, of the holders of the debentures of said company then and thereafter to be issued, and, secondarily, for the use of said company.

(This indenture is exhibited as Exhibit "B" to the amended bill in this case and is referred to by petitioners.)

The petition then avers that "thereupon there was issued, for value received, to divers persons, debentures of said company to the amount of $600,000, of which amount $215,000 were issued to persons holding said interim receipts for so much money paid upon purchase price of said Embreeville land, and about $110,000 additional were issued for the payment of the residue of purchase-money due, as aforesaid, for said lands under the conveyance by said Miller to said trustees. The remainder of the proceeds of said debentures was received by the company and employed in the improvement and developement of said property and the operating the business of said company.

Other allegations are made by the petitioners as to the terms and conditions of the holding of said trustees under the said indenture of March 6th, 1890, and the undertaking of the company in the premises, and then sets forth that prior to the filing of the bill in this cause the said trustees had conveyed a certain portion of said lands (about 900 acres) to the Embreeville Town Company, and a small portion for right of way to the railroad company over said lands, and that, excepting such portions, said trustees have held and retained the title to said lands for the security of said debenture-holders, according to the terms of said indenture, and were so holding the same at the bringing of this suit, except that one of them, to wit, said Thomas Clark, had released, set over, and conveyed all his interest and title in said lands to his cotrustees, Andrew Clark and Thomas Reid, who continued to hold title as aforesaid primarily for the benefit of said debenture-holders and the residuary beneficial interest therein for the Embreeville Company, which meanwhile had gone into possession and were improving same, &c.

The petition, proceeding, shows that on the 16th February, 1893, the said trustees, Andrew Clark and Thomas Reid, at request of the said Embreeville Freehold Company and in pursuance of action taken by holders of existing debentures, consented and agreed to continue to hold said Embreeville property and lands for the use, benefit, and security also of the holders of new debentures then to be issued by said company to the amount of $125,000, the relation of which to the former debentures was then or was thereafter to be settled and determined by the consent of the holders of said original

debentures, and said debentures were so issued by said company to the amount of $125,000, for so much money received from the London Trust Company, and ever since such issuance said Clark & Reid have continued to hold the title to said lands, according to their agreement, for the security as well of the new debentures as the original debentures aforesaid, and the terms and conditions of their holding are set forth in said indenture of Feb'y 16th, 1893, filed as Exhibit "C" to the amended bill herein.

It is alleged that the company has made default in the payment of interest; that its property has become liable to be seized for taxes; that a receiving order had been made and an order for winding up the affairs of said company as an insolvent corporation, and thus the entire amount of said debentures had been accelerated and made due to the respective holders thereof, and said property has become and is liable to sale for the satisfaction of the claims of said debenture-holders.

The original debentures are held by divers persons in Great Britain, and their names cannot be given, but petitioners are bound to protect them. The second series of debentures is *in solido* held by the London Trust Company of London, England, which claims said last debentures (although last issued) to be first in right of satisfaction under the terms of said indentures, and said trustees have been duly requested by said debenture-holders to exercise their duties as trustees for their protection and defense and to have said lands so held by them for their security sold and proceeds applied to their satisfaction in such order as may be made to appear to the court right and equitable.

It is alleged, further, that Thomas Reid has ceased to act as trustee, but that the title to said lands is still in him and Andrew Clark jointly, and that said Andrew Clark alone is actively engaged in representing said debenture-holders, &c. A number of propositions, raised by the allegations made, are set forth in the petition (Record, vol. 4, pages 238–241) as the law, but it is not deemed necessary to set them out here. A prayer is made for the usual orders, and that any and all debenture-holders be allowed to prove their claims, and that they be decreed to have a first right, equity, and lien in and upon said property prior to the said Embreeville Company and all creditors claiming solely under contract with it and a prior right to the proceeds of the sale thereof, and for general relief.

The London Trust Company also files a petition (Record, vol. 4, pp. 259 *et seq.*), substantially making the same allegations as those in petition of Clark & Reid and claiming a first right and lien upon the property embraced in the deed from Miller to Clark, Clark & Reid, &c.

Proof was taken, and the master, under the reference to him hereinbefore noted, made a report (found in vol. 6, at pages 69, 108), and under the "third" heading (pp. 75–96) he allows numerous claims of Tennessee creditors and others within the United States and some in Great Britain, but did not therein finally act upon the claims presented by the petitions of Clark & Reid and London Trust Company (vol. 6, page 105); but the amounts claimed were

stated, and seem to have been taken by counsel as reported against, in so far as priority was concerned, and exceptions taken, which are found in said volume, at pages 211 and 215.

The chancellor heard the cause in ——, 1895, and his rulings and decree are found in Record, vol. 6, page 232 *et seq.*, and 238 *et seq.* He held and decreed (with other things not excepted to) that the exceptions of the London Trust Company to the master's report were not well taken, and overruled them, and that the contract between said company and the Embreeville Company and the trustees, Clarke, Reid & Clark, for a trust to be thereafter executed, was in fact never executed, and was a contract made at the London office of said Embreeville Company; was never registered in Tennessee until after the filing of the bill in this cause; was fraudulent and void by virtue of its terms, as for want of registration, and vested no rights whatever in said London Trust Company, and that said trust company is not entitled to share in the assets being administered under the orders of the court until after payment of all the debts due to Tennessee creditors, Pittsburg Iron & Steel Engineering Company, other creditors residing in other States of the United States, and those in Great Britain contracting with reference to Tennessee business; that the Pittsburg Iron & Steel Engineering Company, as mechanics and furnishers for erecting a furnace and making improvements upon the property specified in their bill, had first lien and must be paid in full their claim; that the trust assignment to Kirkpatrick by the Embreeville Company, by W. J. Love, is absolutely void; that under the act of 1877 (which was adjudged constitutional) all the creditors of said Embreeville Company residing in Tennessee are entitled to priority of satisfaction out of the assets of the Embreeville Company (after the payment out of the proceeds of the real estate of the claim of Pittsburgh Iron & Steel Engineering Co.) as against the other creditors of said company who are non-residents and citizens of other States of the United States or other countries; that the other creditors of the Embreeville Company who are citizens of other States of the United States, and who contracted with the said Embreeville Company as located and doing business in the State of Tennessee, are entitled to share ratably in the assets of the defendant Embreeville Company being administered in this cause after the payment of the Pittsburgh Iron & Steel Engineering Company and the Tennessee creditors (except the coke stopped *in transitu*); that the debenture-holders claiming under the title vested in defendants Clark, Reid & Clark by the deed of Miller & wife, Jan'y 16th, 1890, and the subsequent declaration of trust of March 6th, 1890, are simply contract creditors under a contract made with the London office of the Embreeville Company, and that neither said deed of Jan'y 16th, 1890, nor the declaration of trust of March 6th, 1890, vested in said debenture-holders any rights of priority as against other creditors dealing with said company as domiciled and doing business in Tennessee; that said declaration of trust of March 6th, 1890, was fraudulent in law and void; that the same was withheld from registration in Tennessee for a fraudulent purpose, and even if same had been

valid it vested no rights in the debenture-holders for want of registration, and said holders are not entitled to share in the assets of the Embreeville Company being administered until after the payment of the Tennessee creditors, the Pittsburgh Iron & Steel Engineering Co., creditors residing in other States of the United States, and residents of Great Britain contracting with reference to Tennessee business; that the London Trust Company recover of the Embreeville Company $133,779.16, with interest from 6 November, 1895; that Clark, Reed & Clark, for the use of holders of debentures described in the declaration of trust of March 6th, 1890, recover of the Embreeville Freehold Land, Iron & Railway Company the amounts hereinafter to be shown by them under the leave given by former order of the court in this cause, &c.

From this decree Clark & Reed, as trustees, and London Trust Company, and certain general English creditors of said Embreeville Company under the petitions of Bradbury, Wilkinson & Co. and Lakeman & others, appeal.

(It should have been previously stated that under other orders of the court the property of the Embreeville Company had been sold, and no question arises upon any portion of the record except such as has been herein presented.)

The Errors Assigned, in Brief, by Clark & Reed, Trustees, and London Trust Company.

1. It was error to give the general creditors residing in Tennessee, under the act of 1877, priority over creditors of the Embreeville Company residing in and citizens of other States and counties secured by deed of trust.

2. It was error to adjudge that other American general creditors of said company have priority of appellants.

3. It was error to hold that the debenture-holders are simple contract creditors and must be postponed to all Tennessee creditors, all other American creditors, and to English creditors contracting with reference to Tennessee business.

4. It was error to adjudge that the contract between the London Trust Company and the trustees, Clark & Reed, was never executed, and was fraudulent and void by virtue of its terms and non-registration, and that said London Trust Company is postponed to general creditors in Tennessee and other American creditors and English creditors contracting with reference to Tennessee business.

5. It was error to direct payment in full of Tennessee creditors, other American creditors, and English creditors contracting with reference to Tennessee assets before the payment of the claims of debenture-holders out of real assets.

6. It was error to refuse to Clark & Reed, as trustees, compensation for themselves and counsel for services, &c.

7. It was error to refuse to adjudge that said debenture-holders, under the title held by Clark & Reed, as trustees, for their benefit, have a first right and equity lien upon the real property prior to the Embreeville Company and to all creditors claiming solely by simple contract with it.

8. It was error to hold that under the legal title held by Clark & Reed, trustees in trust for those who should contribute money toward paying the purchase price of said real estate and placing improvements therein, were not subrogated to the rights and equities of the vendors and lienholders, and therefore entitled to a prior right in the proceeds of the sale of said realty.

The error complained of by petitioners Bradbury, Wilkinson & Co. and Lakeman & others is that there should have been no priority given to general creditors residing in America outside of Tennessee and foreign creditors who contracted with Embreeville Company with reference to Tennessee business over other foreign (or British) general creditors of said company.

We are thus brought to the contention of the parties. All may be condensed into a few controlling questions, thus stated:

1. Was the making of the deed by Miller & wife to Clark, Clarke & Reid Jan'y 16th, 1890, attended with any agreement, then existing or then made between said vendees and the Embreeville Company, that they should take and hold the title thereunder as trustees for the benefit of the holders of the debentures which had then been or might thereafter be subscribed for and issued?

2. If such agreement did exist or was then made, can it be maintained and enforced as against creditors of the company having no notice of such trust, other than the fact appearing from the registered deed itself, showing that the title was not in the company?

3. Does the act of assembly, 1877, chap. 31, undertake to distinguish and give preference between the general creditors of a foreign corporation (complying with the provisions of said act and domiciliated in Tennessee) residing out of Tennessee, or is there any law which will justify such preference in the administration and disposition of the assets of an insolvent corporation of the kind mentioned?

The facts as we find them in this voluminous record are:

Record, vol. V, p. 167–'8. James Gordon Miller, without associates and on his own account alone, so far as appears, in the year 1889 bargained for and took options upon and title to the lands involved in this cause. He doubtless had in view the organization of a company such as was afterwards worked up.

Vol. V., p. 176. On 20th Sept., 1889, said Miller made a contract with one Ernest Stobart Inman "as trustee for and on behalf of a company which is intended to be *a* incorporated under the English companies' act under the title of The Embreeville Freehold Land, Iron — & Company, Limited." This agreement fixed the amount of the nominal capital of the comtemplated company; that Miller should sell and the company purchase the Embreeville Iron Works lands (locating and describing them) at the sum of 400,000 pounds; that this should be paid in ordinary preferred stock of the company and in debentures of the company, of which there was to be a total issue of 120,000 pounds. It is elaborate and it is not neccessary to give its provis-

ions further, except to mention that section 11 reads: "Upon payment and satisfaction of the purchase-money * * * the vendor shall cause the said lands to be duly conveyed * * * vesting the said lands in the company or in such trustees or other persons as the company may require in accordance with law," and then Inman was to be discharged from all liability, &c.

Vol. V, p. 221. The Embreeville Freehold Land, Iron & Railway Company, Limited, organized 5th November, 1889, its memorandum of association bearing date Oct. 31st, 1889.

Exhibit "C" to Prescott's deposition.

At some time prior to the date of organization the contemplated company or its promotors had secured Sir Thomas Clark, Andrew Clark & Thomas Reid to act as trustees (see Exhibit "B" to Prescott & Hampden's deposition, a prospectus or circular which is dated October 30th, 1889). This sets forth the resources of the company, its purpose, that a debenture issue not exceeding 120,000 pounds is authorized, and giving other information and offering "shares" for sale.

By the 3rd subjection of article 1 of articles of association it is provided that the directors of the company should forthwith adopt the agreement between Miller & Inman and carry the same into effect.

Exhibit "C" to Prescott's deposition.

Record, vol. V, p. 188. By a circular or prospectus, dated Jan'y 20, 1890, the public is notified "that this company is prepared to receive applications for its land-mortgage debentures." * * * "These debentures are specially secured under a deed of trust, by a first charge, &c."

But there must have been an earlier prospectus of this character, since we find the form of application for allotment of debentures refers to a prospectus of the company dated November 15th, 1889.

Record, vol. V, p. 192.

The public, upon the faith of the representations made by the company in its printed matter, began to subscribe for its stocks and debentures about the month of November, and subscribers received "interim receipts" for the monies paid, which upon their face state that the holder would be entitled to stock or debentures thereafter to be prepared.

See dep. of W. C. Prescott, vol. V, p. 186, and Exhibit "G," p. 196.

On 16th January, 1890, Miller made deed to Clark, Reed & Clark of the lands involved. On that day it was acknowledged in London and was received and registered at Jonesboro Feb'y 1st, 1890.

Record, vol. 3, p. 83.

Between that date (Jan'y 16th, 1890) and Feb'y 21st, 1890, the parties who held liens on the lands were settled with and a quit-

claim deed was made by them to Clark & Reed, dated 31st January, 1890, but filed for registration Feb'y 21st, 1890.

See vol. VI, p. 135 and 143.

The Embreeville Company received money from no other source than its subscribers for stock and debentures, and up to the 7th Feb'y, 1890, the interim receipts for debentures amounted to 26,650 pounds and for stock 14,482 pounds, all paid in between the date mentioned and November 4th, 1889.

Prescott's depo., Record, vol. V, p. 138, and Exhibit H thereto, being abstract from cash book of company, *idem*, p. 196.

Record, vol. IV, p. 75.

On March 6th, 1890, an instrument called a deed of trust, or a declaration of trust in the pleadings and briefs, was made by the Embreeville Company and Clark, Reed & Clark, which recites that the "company is about to issue debentures under its common seal," &c., and "desires to secure the debentures," &c., and recites further: "And whereas the present trustees are willing to act as trustees for the purposes hereof, &c.;" and then proceeds at length to arrange for debentures in accordance with its published prospectus.

Debentures were shortly thereafter issued, and they show on their face that they were secured or entitled to the benefit of an indenture dated March 6th, 1890, and stipulated that they should be held subject to the provisions of said indenture, &c.

See original Exhibit P to Prescott's deposition.

This paper was not registered in Tennessee until after the filing of the original and amended bills in this cause.

As to all the foregoing facts there can be no controversy.

In addition to the evidence they furnish bearing upon the questions at issue, there is the testimony of three witnesses, to wit, Andrew Clark, one of the trustees or vendees in the deed of 16th Jan'y, 1890, and Wm. C. Prescott and Lord Hampden (Mr. Brand), two of the original directors of the Embreeville Company.

We have carefully considered all the undisputed facts in their relation to each other and the testimony of these witnesses, with the exhibits to their depositions, and we must conclude that the company from the first had the purpose to make secure its debenture purchasers in the manner it was attempted on the 6th March, 1890, by a trust deed or declaration of trust, and that there was not at the time of the passing of the title by Miller to Clark, Clark & Reed, or at any time prior thereto any agreement or understanding that those partise were receiving the lands under the deed to hold as security to the parties who were then purchasing and had before purchased debentures or had subscribed for the same; nor was there any intention on the part of the company that the subscribers for the debentures should be subrogated to the lien which the vendors of Miller had upon the lands, nor did the transactions themselves have the effect to subrogate said subscribers and holders of interim receipts to said lien. Previous to the 6th of March said Clark &

Reed were the trustees of the land company; they were so advertised on the company's circulars and prospectuses; held the title to the lands subject to the company's will and direction; were naked trustees for the company.

The subscribers for debentures at a later date exchanged their interim receipts for debentures, with full notice that their security was in and under the trust instrument of 6th March, the face of such debenture so showing, and the said holders and the trustees made by said instrument neglected to perfect the same by having it recorded. This failure to record, there is proof to show, was deliberate on the part of the company, because registration would have destroyed the company's credit in America.

It is true that it does not appear that the trustees were parties to any scheme to withhold the trust from registration in order that credit might be had here, and the question of fraud in fact in connection with the trust cannot be considered, not being raised by any pleading, but the non-registration of the paper till after the filing of the bills herein must place all debenture-holders in the position of unsecured creditors. In our view it becomes necessary to consider whether the instrument of March 6th would have afforded any security to the debenture-holders had it been registered.

Without discussing at length the testimony of the three witnesses named who are relied upon by the debenture-holders to establish the alleged fact of the parol trust, it is well to say that Sir Andrew Clark, the only one of the trustees examined, has no clear memory as to the incidents of his early connection with the company, except that he was asked and consented to act as trustee, and left all other matters to his legal adviser. He refers to the paper of March 6th as being the paper he executed for the security of the debenture-holders, and this, taken in connection with the recitations in the paper itself, make it reasonably certain that it contained the first consent on his part to act as trustee for the then existing or subsequent debenture-holders.

Concerning the testimony of Prescott and Hampden, directors of the company, we are constrained to the conclusion that their present situation and the fact that the company did all the while contemplate a trust to secure all purchasers of debentures have somewhat confused them and induced them to state as a fact that the company had the title to the land vested in the said Clark & Reed with the understanding or agreement that they would hold under that deed as security for the obligations of the company. Upon the whole case this position is not sustained—certainly not by such clear and explicit proof as under the rulings of our Supreme Court is requisite to establish a parol trust.

1 Cold., p. 153; 7 Bax., 557–573.

The whole strength of the position of the debenture-holders is broken at this point. The very able and elaborate briefs of their counsel present much law, which would not be disputed if the facts were as by them insisted.

As there was no parol trust, it is, of course, unnecessary for us to

consider whether such, if established, could have been upheld and enforced against other simple contract creditors under the circumstances existing. Upon the case made, the English-debenture-holders under the trust declaration of March 6th, 1890, and those represented by the London Trust Company stand in this court as unsecured English creditors of the Embreeville Company.

What as to the priority of satisfaction of creditors from the assets of the insolvent corporation?

Under the act of 1877 (chap. 31), being "An act to declare the terms on which foreign corporations organized for mining, &c., may carry on business and purchase, hold, and convey real and personal property in this State," it was provided (sec. 3) that a corporation complying with the terms as given "should be deemed and taken to be a corporation of this State," subject to the jurisdiction of its courts, &c., and the property of such corporations (sec. 5) "shall be liable for all the debts, liabilities, and engagements" of the same, "to be enforced in manner provided by law for the application of the property of natural persons to the payment of their debts, engagements, and contracts. Nevertheless, creditors who may be residents of this State shall have a priority in the distribution of assets over all simple contracts creditors being residents of any other country or countries," &c.

The Embreeville Company, having complied with the provisions of this act, became a Tennessee corporation, subject to suit, with right to sue, acquire, hold, and dispose of property, liable for all its debts, &c., in the same manner as a natural person would be, with, however, the condition that its property should always be first liable to Tennessee creditors.

The court below decreed a preference to the Tennessee creditors under the statute, and then gave to other creditors residing in other States of the United States and English creditors who had contracted with the Embreeville Company through the Embreeville office a preference to those English creditors who had become such through contract at the London office.

That portion of the decree so giving Tennessee creditors preference is not appealed from by any one, and in argument and brief the constitutionality of the act under which the chancellor acted seemed conceded, or is passed as but the utterance of what was already the law in the administration of estates of non-resident decedants. We are not, therefore, called upon to disturb the chancellor's ruling on this point, but counsel for creditors residing in other States of the Union, to whom priority was given over English creditors, argue with ingenuity and ability that to construe the statute as giving preference alone to Tennessee creditors would at once destroy its constitutionality, making it repugnant to the plain provisions of the Constitution of the United States found in article 4, sec. 2, and clause, sec. 1, article 14. If it is said the preference over alien creditors be by the act given to all creditors in Tennessee and other States, then it would be constitutional.

It is clear to us, the language used does not admit of doubt, that the statute gives and was only intended to give preference to

"creditors who may be residents of this State." There is nothing in this statute which can be construed as manifesting any interest in the securing of creditors of other States. It is true the preference is given to residents of this State over those "of any other country or countries." From this language it is infer-ed that preference was not intended to be given over residents of other States, for that, as contended, would make the act unconstitutional. As before stated, its unconstitutionality is not questioned. It is therefore unnecessary for us to hunt grounds upon which to sustain it. We leave it as it is written, and hold that it does not give any protection by way of preference to creditors in other States. On the contrary, we hold that the act expressly makes every foreign corporation complying with its terms a Tennessee corporation in every respect, and gives to its creditors, wherever their debts may have been contracted, the same rights to share in its property when administered upon, excepting only the preference to creditors resident in Tennessee.

Received.

If the principles of international law would justify a preference to all creditors in other States of the Union over those of a foreign country in any case, they could not be applied in this case because the sovereignty of Tennessee has invited and domiciled this company with the assurance of certain rights and subject expressly to the conditions that its property shall be "liable for all its debts, liabilities, and engagements," "to be enforced in manner provided by law for the application of the property of natural persons to the payment of their debts," &c.—that is, in the same manner as the property of natural persons resident in Tennessee is administered with the preference stated. If this be not the meaning, there would be no effect to the provisions domiciling and conferring upon the corporation the rights and subjecting it to the conditions set forth. Without discussing this further, and without being led into the fields into which counsel have gone and where so much learning is found, we are content to disaffirm the holding of the court below in so far as it made distinction between non-resident creditors upon any ground. The English debenture-holders under the declaration of trust of March 6th, 1890, and the London Trust Company will be entitled to share *pro rata* in the real assets with all other simple contract creditors residing out of Tennessee. The said company and the trustees under said trust of March 6th, 1890, must settle between themselves which has the prior right to the dividend in the distribution of that fund.

We do not think that the trustees Clark & Reed are in a condition to have any allowance made them or their counsel for services from the general fund.

The costs of this appeal and of this court will be paid from the fund which would remain after payment of the first charge and the Tennessee creditors.

LEWIS TILLMAN,
Special Judge.

We concur.
R. M. BARTON, JR.,
J. F. WILSON,
Judges.

Filed November 9th, 1895.

J. G. STUART, *D. C.*

Court of Chancery Appeals at Knoxville, Tennessee, September Special Term, 1895.

SATURDAY, *November* 9, 1895.

Court met pursuant to adjournment.

Present and presiding: The Honorable Judges S. F. Wilson and R. M. Barton, Jr.

The minutes — Wednesday, Nov. 6, 1895, were read and signed, when the following proceedings were had, to wit:

C. M. MCCLUNG & CO. *et al.*
vs.
EMBREEVILLE FREEHOLD LAND, IRON AND R'Y CO. } Modified & Appealed.

In this cause, Hon. M. M. Neil being absent, by consent of counsel for both parties Hon. Lewis Tillman sat as special judge.

This cause came on to be heard on November 9th, 1895, before the hon. the court of chancery appeals, upon the transcript of the record from the chancery court at Jonesboro, on the appeal of Clark and Reid, trustees, and the London Trust Company, and of the petitioners under the petit-ons of Bradbury, Wilkins & Co. & G. W. Lakeman *et al*, and upon consideration thereof the court is pleased and doth accordingly order, adjudge, and decree as follows:

First. That the defendants Clark and Reid took and held the naked legal title to the lands in question in trust for the Embreeville Freehold Land, Iron & R'y under the deed from James Gordon Mailer dated Jan'y 16, 1890, as a mere naked, dry trust, and that there was no parol or other agreement, either before or at that time, that they should hold the legal title to said lands in trust for the debenture-holders, and that the only security ever promised, given, or relied upon by them for the money advanced on the interim receipts paid for the debenture bonds was and is the trust deed of March 6, 1890.

2nd. That the trusts deeds executed to secure the debenture bonds represented by Clark & Reid, trustees, and held and owned by the London Trust Co, were not registered until after this insolvent proceeding was instituted, and for this reason constitute no security and do not give the owners of the debenture bonds any right of priority of payment over the other creditors of the company out of the proceeds of said lands.

3rd. That all of the holders and owners of the debenture bonds of the company are simple contract creditors of said company and

stand upon the same footing in reference to the distribution of the assets of the company as all other of its creditors residing out of the State of Tennessee.

4th. That all of the creditors of said company who resided in the State of Tennessee are entitled to priority of payment out of all of the assets of the company of every kind over all of the creditors of said company who do not reside in the State of Tennessee.

As to all tha foregoing matters and the priority given to the Pittsburg Iron & Steel Engineering Co. the decree of the chancellor is affirmed.

5th. It is further decreed that that portion of the chancellor's decree giving priority of payment to such of the creditors of said company who reside in the United States of America, but not in the State of Tennessee, and to such creditors now resident of Tenn. who dealt with the company in relation to its Tenn. office, over all alien creditors of said company, be, and the same is hereby, reversed, it being here adjudged that all the creditors of said company residing out of the State of Tenn. must share equally and rotably in the distribution of the funds of said company after the Tenn. creditors shall have been paid in full.

6. That Clark & Reid, trustees, are not entitled to compensation for services of themselves or counsel in the management of their trust or in this cause.

7. That the relative priorities of the original debenture-holders and the so-called prior liens debenture-holders is left open for settlement by them or the trustees or future adjudication by the chancellor.

8. That this cause be remanded to the chancery court at Jonesboro for further proceedings in accordance with the opinion and decree of this court, and the costs paid out of the funds in this cause.

9. That on application of Messrs. Ingersoll & Peyton, Chas. Seymour, and S. C. Williams, solicitors for various petitioners, liens are declared on the sums declared to be due to their several clients.

10. From the foregoing decree Rogers, Brown & Co., Hull Coal & Coke Co., Julian Kennedy, C. G. Blake, and Clark & Reid, trustees, pray an appeal to the supreme court now in session at Knoxville, which is granted.

The court of chancery appeals filed its written opinion and finding of facts, which is ordered attached to the transcript and made part of the record.

In the Supreme Court of Tennessee.

C. M. McClung & Company *et al.*
vs.
Embreeville Freehold Land, Iron & Railway Company *et al.*

Assignments of Error.

Charles G. Blake, Rogers, Brown & Company, and the Hull Coal & Coke Company, by their solicitor, feeling themselves to be aggrieved by the findings and decree of the supreme court of Ten-

nessee in the above-entitled cause, assign error thereto as follows, to wit:

I.

That the court erred in finding that the act passed by the General Assembly of Tennessee on March 19th, 1877, and approved March 21st, 1877, being chapter 31 of the Laws of Tennessee of 1877, defining the terms upon which foreign corporations organized for mining and manufacturing purposes might do business in Tennessee was a valid enactment.

II.

That in the chancery court held at Jonesboro, in Washington county, State of Tennessee, being the court which had and exercised original jurisdiction in the above-entitled cause, the appellants herein specially set up and claimed that they were entitled to the privileges and immunities guaranteed in section 2, article IV, of the Constitution of the United States, namely, "the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States," and that they were deprived of such privileges and immunities by the act of the General Assembly of Tennessee, approved March 21st, 1877, above referred to, and also that their rights, privileges, and immunities as citizens of the United States were abridged by the provisions of the statute of the General Assembly of Tennessee, approved March 21, 1877, referred to above, under the provisions of section "1" of article XIV of the amendments of the Constitution of the United States, and that they were also deprived of their property without due process of law by the enforcement of said invalid enactment of the General Assembly of the State of Tennessee, but the decision of said chancery court was against the rights, privileges, or immunities so set up and claimed by the appellants; and the same rights, privileges, or immunities so set up and claimed in the State chancery court of original jurisdiction were again set up and claimed by the appellants in the supreme court of the State of Tennessee, the highest court of the State of Tennessee in which a decision in this suit could be had, and the decision of said supreme court was against the rights, privileges, or immunities so set up and claimed by the appellants under the aforesaid provisions of the Constitution of the United States; all of which is hereby assigned as error.

III.

That the act of the General Assembly of Tennessee passed March 19, 1877, and approved March 21, 1877, and which was construed and interpreted, and the provisions of which said act were applied and enforced in this cause against these appellants, was and is in contravention of the Constitution of the United States, in that said act grants privileges and immunities to citizens of Tennessee not common to other citizens of the United States.

IV.

That said act passed March 19, 1877, and approved March 21, 1877, chapter 31 of the acts of the General Assembly of Tennessee passed in the year 1877, entitled "An act to declare the terms upon which foreign corporations organized for mining or manufacturing purposes may carry on their business, and purchase, hold, and convey real and personal property in this State," is in contravention of and repugnant to section "2," clause "1," article "4," of the Constitution of the United States, and is in contravention of and repugnant to section "1," article "14," of the amendments to the Constitution of the United States.

Wherefore these appellants pray that for the errors assigned said findings and decree may be reversed.

CHARLES G. BLAKE,
ROGERS, BROWN & CO.,
HULL COAL & COKE CO.,
By TULLY R. CORNICK, *Solicitor.*

Filed Dec. 10th, 1895.

ALEX. McMILLAN, *Clerk*,
By J. G. STUART, *D. C.*

Supreme Court of Tennessee, at Knoxville, September Term, 1895.

FRIDAY, *November* 15, 1895.

Court met pursuant to adjournment.

Pesent and presiding: The Honorable Chief Justice D. L. Snodgrass and the Honorable Associate Justice- W. C. Caldwell, W. K. McAlister, and W. D. Beard.

The minutes of yesterday were read and signed, when the following proceedings were had, to wit:

C. M. McCLUNG & Co. *et al.* *vs.* EMBREEVILLE FREEHOLD LAND, IRON & RAILWAY CO. (LIMITED) *et al.*	Affirmed and Remanded.

This cause came on to be heard on this Nov. 15, 1895, before the hon. the supreme court of Tennessee upon the transcript of the record of the chancery court at Jonesboro and the court of chancery appeals at Knoxville and upon the appeal of Clark & Reid, trustees; Rogers, Brown & Co., Hull Coal & Coke Co., Julian Kennedy, and C. G. Blake from the decree of the court of chancery appeals, and upon the writs of error of Rogers, Brown & Co., The Hull Coal & Coke Co., and C. G. Blake to the chancery court of Washington county, Tennessee, and the motion to dismiss said writ of error, which motion is overruled and disallowed, and upon the written opinion and findings of facts of the chancery court of appeals and the assignments of error thereto by the appellants, and the answer

of the appellees to said assignments of error, and upon consideration the court is of opinion that there is no error of the court of chancery appeals, and doth accordingly order, adjudge, & decree that said decree be and the same is accordingly confirmed.

It is therefore decreed by the court as follows:

1st. That the defendants Clark & Reid took and held the naked legal titles to the lands in question in trust for the Embreeville Freehold Land, Iron & Railwaw Co. (Limited) under the deed from James Gordon Miller dated Jan'y 16, 1890, as a mere naked, dry trust, and that there was no parol or other agreements, either before or at the time, that they should hold the legal title to said lands in trust for the debenture-holders or any of them, and that the said debenture-holders have no lien upon the said lands for the security of the debentures so held by them.

2nd. That the trust deeds executed to secure the debenture bonds issued by the company were not registered until after this insolvent proceeding was instituted, and that said trust deeds constitute no security and did not give the owners of the debenture bonds any right and priority of payment over the other creditors of the Embreeville Freehold Land, Iron and Railway Co. out of the proceeds of said lands which were sold in this cause.

That the act of the Gen'l Assembly of Tennessee passed M'ch 19, 1877, and approved M'ch 21st, 1877, chapter 31st, entitled "An act to declare the terms on which foreign corporations organized for mining or mfg. purposes may carry on their business and purchase, hold, and convey real and personal property in this State," is in all respects a valid inactment and is not in contravention of paragraph 2, article IV, or article 14, amendments to the Constitution of the U. S., nor in contravention of any other provision of the Constitution of the U. S.; and the court further finds that said court of chancery appeals erred in determining that the question of the construction of the said act was not properly presented to said court under the general appeals prosecuted therein, and that portion of the said findings of the court of chancery appeals is reversed.

3rd. That all of the holders and owners of the debenture bonds of the Co. are simple contract creditors of said Co. and stand upon the same footing with reference to the distribution of the assets of the Co. as all of its other creditors who reside out of the State of Tennessee, whether they be residents of other States or of the Kingdom of Great Britain.

4th. That all of the creditors of the Embreeville Freehold Land, Iron and Railway Co. (Limited) who resided in the State of Tenn. are entitled to priority of payment out of all of the assets of said Co., both real and personal, over all of the other creditors of said Co. who do not reside in the State of Tenn., whether they be residents of other States of the U. S. or of the Kingdom of Great Britain; that all of the creditors of the Embreeville Freehold Land, Iron & Railway Co. who reside out of the State of Tenn., whether they reside in the other States of the U. S. or in the Kingdom of Great Britain, have the right and must share equally and ratably in the

distribution of said funds of the said Co. after the residents of the State of Tenn. shall have been first paid in full.

5th. That Clark & Reid, trustees, are not entitled to compensation for their services or to have their solicitors' fees for their services in this cause paid out of the proceeds of the property of the Embreeville Freehold Land, Iron & Railway Co. (Limited), but may have same out of funds coming to debenture-holders.

6th. That the relative priorities of the original debenture-holders and the so-called prior lien of the debenture-holders is left open for settlement by them or their trustees or to *the* adjudication by the chancellor.

7th. That this cause be remanded to the chancery court at Jonesboro for further proceedings, in accordance with this decree and the decree of the court of chancery appeals, and that all of the costs of the cause shall be paid out of the funds in court.

8th. That an application of Mess. Ingersoll & Peyton, Chas. Seymour, & S. C. Williams, solicitors for various petitioners' liens, *are* declared on the sums which shall be due their several clients under this decree for reasonable fees for their services in this cause. It is further decreed that a reasonable fee shall be paid to Green & Shields and Deaderick & Epps, the solicitors filing this general creditors' bill, out of the funds in court for their services in filing the bills and prosecuting this insolvent proceeding, and the same shall be taxed as part of the costs of this cause.

A reference as to what would be a reasonable fee for their said services may be had in the chancery court at Jonesboro.

Judge McAlister, being incompetent by reason of relationship to one of the parties, did not participate in the hearing and decision of this cause.

In the Supreme Court of Tennessee.

C. M. McClung & Company *et al.*
vs.
Embreeville Freehold Land, Iron & Railway Company, Ltd., *et al.*

Messrs. Lucky & Sanford, city.

Gentlemen: It appears from the record in the case of C. M. McClung & Company *vs.* Embreeville Freehold Land, Iron & Railway Company, Limited, *et al.*, lately pending in the supreme court of Tennessee, that you are solicitors for the following non-resident American creditor, Julian Kennedy, who is of the class with my clients, Charles G. Blake, Rogers, Brown & Company, and the Hull Coal & Coke Company, for whom I purpose to prosecute a writ of error to the Supreme Court of the United States upon error as assigned in the enclosed assignment of errors, the original of which has been filed in the office of the clerk of the supreme court of Tennessee, at Knoxville.

Kindly accept service of notice and endorse hereon your declination to join for your clients in the application for the writ.

Respectfully, &c.,

(Signed) TULLY R. CORNICK,
Solicitor for C. G. Blake, Rogers, Brown & Company, Hull Coal & Coke Company.

Knoxville, Dec. 10th, 1895.

Copy of this notice received. We decline for the Kennedy named therein to join in the application for the writ of error as contemplated.

December 18, 1895.

(Signed) LUCKY & SANFORD,
Sol's for Julian Kennedy.

In the Supreme Court of Tennessee.

C. M. McCLUNG & COMPANY *et al.*
vs.
EMBREEVILLE FREEHOLD LAND, IRON & RAILWAY COMPANY, LTD., *et al.*

Messrs. Deaderick & Epps, Jonesboro, Tenn.

GENTLEMEN: It appears from the record in the case of C. M. McClung & Company *vs.* Embreeville Freehold Land, Iron & Railway Company, Limited, *et al.*, lately pending in the supreme court of Tennessee, that you are solicitors for the following non-resident American creditors: Queen & Company, American Bridge & Iron Company, Eimer & Amend, Williamsport Wire Company, Wilson Snider Manufacturing Company, Nathan Manufacturing Company, and A. S. Cameron Steam Pump Works, who are of the class with my clients, Charles G. Blake, Rogers, Brown & Company, and the Hull Coal & Coke Company, for whom I purpose to prosecute a writ of error to the Supreme Court of the United States upon error as assigned in the enclosed assignment of errors, the original of which has been filed in the office of the clerk of the supreme court of Tennessee, at Knoxville. Kindly accept service of notice and endorse hereon your declination to join for your clients in the application for the writ.

Respectfully, &c.,

(Signed) TULLY R. CORNICK,
Solicitor for C. G. Blake, Rogers, Brown & Co., Hull Coal & Coke Co.

Knoxville, Dec. 10th, 1895.

Copy of this notice received. We decline for the parties named herein to join in the application for the writ of error as contemplated.

December 10th, 1895.

(Signed) DEADERICK & EPPS.

In the Supreme Court of Tennessee.

C. M. McClung & Company *et al.*
vs.
Embreeville Freehold Land, Iron & Railway Company, Ltd., *et al.*

Messrs. Reeves & Baxter, Jonesboro, Tenn.

Gentlemen: It appears from the record in the case of C. M. McClung & Company *vs.* Embreeville Freehold Land, Iron & Railway Company, Limited, *et al.*, lately pending in the supreme court of Tennessee, that you are solicitors for the following non-resident American creditors: Covington Machine Company and the Fairbanks Company, who are of the class with my clients, Charles G. Blake, Rogers, Brown & Company, and the Hull Coal & Coke Company, for whom I purpose to prosecute a writ of error to the Supreme Court of the United States upon error as assigned in the enclosed assignment of errors, the original of which has been filed in the office of the clerk of the supreme court of Tennessee, at Knoxville.

Kindly accept service of notice and endorse hereon your declination to join for your clients in the application for the writ.

Respectfully, &c.,

(Signed) TULLY R. CORNICK,
Solicitor for C. G. Blake, Rogers, Brown & Co., Hull Coal & Coke Co.

Knoxville, Dec. 10th, 1895.

Copy of this notice received. We decline for the parties named herein to join in the application for the writ of error as contemplated.

December 10th, 1895.

(Signed) REEVES & BAXTER.

Filed December 23, 1895.

ALEX. McMILLAN, *Clerk.*

United States of America to—

Calvin M. McClung, William P. Smith, William B. Keener, Franklin H. McClung, Jr., and Charles J. McClung, Jr., partners in trade as C. M. McClung & Company;

James D. Cowan, Charles J. McClung, Mathew McClung, Jacob L. Thomas, and Robert M. Rhea, partners in trade as Cowan, McClung & Company;

William B. Lockett, A. Percy Lockett, and Edward Lockett, partners in trade as W. B. Lockett & Company;

Rush S. Hazen and J. Orville Lotspeich, partners in trade as Hazen & Lotspeich;

The Knoxville Provision & Sugar Company, a corporation under the laws of Tennessee;

Samuel Spencer, receiver of the East Tennessee, Virginia & Georgia Railway Company;

Ogden Bros. & Company, a corporation under the laws of Tennessee;
C. R. Love, doing business as C. R. Love & Company;
Daniel M. Haynes and Tilman W. Haynes, partners in trade as Haynes Brothers;
Samuel P. Evans, receiver of the Pioneer Coal & Coke Company, a corporation under the laws of Tennessee;
R. N. Dosser, A. T. Dosser, and F. F. Dosser, partners in trade under the firm name of Dosser Brothers;
J. H. Jones, assignee of the late firm of Garber Brothers;
John N. Blair, doing business under the firm name of Blair Brothers;
The Dent Mining Company, a corporation of which H. C. Dent is manager;
John Isaac Cox, receiver of the First National Bank of Johnson City, a banking corporation, &c.;
The Jonesboro Banking & Trust Company, a corporation, &c.;
H. C. Jackson, Eliza C. Murphy, Mary C. Carter, Addie J. Fuller and her husband, C. L. Fuller; Mollie Yonce and her husband, Colain Yonce; Ollie McDade and her husband, R. S. McDade; Ida Jones and her husband, L. O. Jones; Mattie Wilson and her husband, Joseph Wilson; Lillie Smyth and her husband, T. S. Smyth, and Matt Jackson (all of Tennessee); Lillie J. Rogan and her husband, James W. Rogan, of Maryland; Charles B. Jackson, of Kansas; Sallie Glen and her husband, D. A. Glenn, of North Carolina (tenants in common, &c.); Isaac E. Reeves, receiver of J. J. Hunt & Company;
Charles K. Lide, C. F. Decker, T. J. Brown; —— Biddle & —— Ellsworth, partners in trade as Biddle & Ellsworth;
Sweetwater Mill Company, a corporation, &c.;
C. L. Rogers, assignee of O'Connell & Rogers;
Sterling Dynamite Company, a corporation under the laws of Tennessee;
Montague & Company, a corporation under the laws of Tennessee.
R. H. Dungan, J. P. White, Robert W. Blair; —— Lingenfelter and —— Krichbaum, partners in trade as Lingenfelter & Krichbaum.
W. L. Martin, W. E. Bullock, L. W. McKensie, A. L. Estill;
John Epps, assignee A. R. Wing;
Greer Machinery Company, a corporation under the laws of Tennessee;
Buckeye Coke Company, a corporation under the laws of Tennessee;
H. Victor Hart, James E. Deakins;
Johnson City Foundry & Machine Company, a corporation, &c.;
Hugh H. Kirkpatrick,
William J. Love,
(The above being Tennessee creditors);
Covington Machine Works, a corporation under the laws of Virginia;
The Fairbanks Company, a corporation under the laws of New Jersey, Baltimore, Maryland;

Queen & Company, a commercial house of Philadelphia, Pennsylvania;
Eimer & Amend, a commercial house of New York city;
American Bridge & Iron Works, a corporation under the laws of Virginia, Roanoke, Va.;
Williamsport Wire Works, a corporation under the laws of Pennsylvania, of Williamsport, Pa.;
Wilson Snyder Manufacturing Company, a Pennsylvania corporation, of Pittsburgh, Pa.;
A. S. Cameron Steam Pump Company, a New York corporation, of New York city;
Nathan Manufacturing Company, a New York corporation, of New York city;
Julian Kennedy, residing at Pittsburgh, Pa.;

And the following persons, firms, and corporations residing in the United Kingdom of Great Britain and Ireland:

John Morris, Frank Crisp, and William Morris, partners composing the firm of Ashurst, Morris, Crisp & Co.;
Frank Crisp, as an individual;
Edward Ardley, doing business as Ardley & Company;
Charles H. Bright and Charles H. Cox, partners under the firm name of Bates, Hendy & Company;
Frederick C. Mathieson, Frederick C. Mathieson, and James F. Mathieson, partners as F. C. Mathieson & Sons;
William A. Stone, William Cash, and Herbert A. Plumb, partners under the firm name of Cash, Stone & Plumb;
Bradbury, Wilkinson & Company, a corporation;
United Kingdon & Foreign Investment Company, a corporation;
Union Mortgage Company, a corporation;
The Commercial Bank of Scotland, a corporation;
London Real Estate Company, a corporation;
London Trust Company, a corporation;
Lord Hampden,
Rev. Hugh Flemming,
Thomas Reid,
Sir Andrew Clark,
W. C. Prescott,
Lord Cloncurry,
Ernest S. Inman,
P. MacFayden,
J. Campbell Dick,
Alfred Bull,
Geo. W. Lakeman,
W. J. Brooks,
F. Denton,
Miss E. H. Robins,
W. Alcock,

Sir Andrew Clark and Thomas Reid, trustees, and The Embreeville Freehold Land, Iron & Railway Co., Ltd., a corporation, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Tennessee, wherein Charles G. Blake, Rogers, Brown & Company, and Hull Coal & Coke Company are plaintiffs in error and you are defendant- in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable David L. Snodgrass, chief justice of the supreme court of Tennessee, this 19 day of December, in the year of our Lord eighteen hundred and ninety-five.

D. L. SNODGRASS,
Chief Justice of the Supreme Court of Tennessee.

We hereby acknowledge service of the within and foregoing citation for and on behalf of the following persons named therein, to wit:

A. B. Biddle and E. E. Ellsworth, partners in trade as Biddle & Ellsworth.

Sweetwater Mill Company, a corporation, &c.

CRUMLEY & CRUMLEY, *Sol-*.
JAS. W. CRUMLEY.
S. S. CRUMLEY.

Jan'y 1st, 1896.

We hereby acknowledge service of the within and foregoing citation for and on behalf of the following person named therein, to wit:

Johnson City Foundry & Machine Company, a corporation, &c.

H. H. CARR, *Sol.*
E. C. REEVES, *Sol.*

By CARR & REEVES, *Solicitors.*

Dec'r 24, '95.

Our fees as solicitors for the Embreeville Freehold Land, Iron & Railway Company, Limited, have been paid in full, and we do not represent said company at this time. We, however, recognize our legal liability to service of the foregoing citation as counsel of record for said company, and we therefore accept service of said citation for and on behalf of said defendant, The Embreeville Freehold Land, Iron & Railway Company, Limited.

We also represent Hugh H. Kirkpatrick, and we hereby for and

on behalf of said Hugh H. Kirkpatrick acknowledge service of said foregoing citation.

This December 24th, 1895.

EMBREEVILLE FREEHOLD LAND,
IRON & RAILWAY CO., LTD.,
By JNO. BOWMAN, *Solicitor.*
H. H. KIRKPATRICK,
By JNO. BOWMAN, *Solicitor.*
S. J. KIRKPATRICK.
JNO. BOWMAN.

We hereby acknowledge service of the within and foregoing citation for and on behalf of the following persons named therein, to wit:

Calvin M. McClung, William P. Smith, William B. Keener, Franklin H. McClung, Jr., and Charles J. McClung, Jr., partners in trade as C. M. McClung & Company.

James D. Cowan, Charles J. McClung, Mathew McClung, Jacob D. Thomas, and Robert M. Rhea, partners in trade as Cowan, McClung & Company.

William B. Lockett, A. Percy Lockett, and Edward Lockett, partners in trade as W. B. Lockett & Company.

Rush S. Hazen and J. Orville Lotspeich, partners in trade as Hazen & Lotspeich.

The Knoxville Provision & Sugar Company, a corporation under the laws of Tennessee.

Dec. 23, 1895.

J. W. GREEN,
SAMUEL G. SHIELDS,
Sol's for Appel-ees.
LEON JOUROLMAN,
Sol. for Sam'l Spencer, Receiver, &c.
CHARLES SEYMOUR,
Solicitor for the London Trust Company, L'd.
OGDEN BROS. & CO.,
H. VICTOR HART,
C. E. LUCKY,
EDWARD T. SANFORD,
Solicitors for Buckeye Coke Company and Julian Kennedy.

We hereby acknowledge service of the within and foregoing citation for and on behalf of the following person- named therein, to wit:

Sir Andrew Clark & Thomas Reid, trustees, by—
HENRY H. INGERSOLL, *Solicitor.*

Dec. 21, 1895.

We hereby acknowledge service of the within and foregoing citation for and on behalf of the following persons named therein, to wit:

Daniel M. Haynes and Tilman W. Haynes, partners in trade as Haynes Brothers.

Samuel P. Evans, receiver of the Pioneer Coal & Coke Company, a corporation under the laws of Tennessee.

C. L. Rogers, assignee of O'Connell & Rogers.

Sterling Dynamite Company, a corporation under the laws of Tennessee.

Montague & Company, a corporation under the laws of Tennessee.

R. H. Dungan, J. P. White, Robert W. Blair, —— Lingenfelter, and —— Krichbaum, partners in trade as Lingenfelter & Krichbaum.

Queen & Company, a commercial house of Philadelphia, Pennsylvania.

Eimer & Amend, a commercial house of New York city.

American Bridge & Iron Works, a corporation under the laws of Virginia, Roanoke, Va.

Williamsport Wire Works, a corporation under the laws of Pennsylvania, of Williamsport, Pa.

Wilson Snyder Manufacturing Company, a Pennsylvania corporation, of Pittsburgh, Pa.

A. S. Cameron Steam Pump Company, a New York corporation, of New York city.

Nathan Manufacturing Company, a New York corporation, of New York city.

Charles K. Lide, C. F. Decker, T. J. Brown.

W. L. Martin, W. E. Bullock, L. W. McKensie.

DEADERICK & EPPS, *Sol'rs.*
A. S. DEADERICK.
J. H. EPPS

We hereby acknowledge service of the within and foregoing citation for and on behalf of the following persons named therein, to wit:

R. N. Dosser, A. T. Dosser, and F. F. Dosser, partners in trade under the firm name of Dosser Brothers.

J. H. Jones, assignee of the late firm of Garber Brothers.

J. N. Blair, doing business under the firm name of Blair Brothers.

The Dent Mining Company, a corporation of which H. C. Dent is manager.

John Isaac Cox, receiver of the First National Bank of Johnson City, a banking corporation, &c.

The Jonesboro Banking & Trust Company, a corporation, &c.

Covington Machine Works, a corporation under the laws of Virginia.

The Fairbanks Company, a corporation under the laws of New Jersey, Baltimore, Maryland.

H. C. Jackson, Eliza C. Murphy, Mary C. Carter, Addie J. Fuller and her husband, C. L. Fuller, Mollie Yonce and her husband, Colain Yonce; Ollie McDade and her husband, R. S. McDade; Ida Jones and her husband, L. O. Jones; Mattie Wilson and her husband, Joseph Wilson; Lillie Smyth and her husband, T. S. Smyth, and Matt Jackson (all of Tennessee), Lillie J. Rogan and her husband, James W. Rogan, of Maryland; Charles B. Jackson, of Kansas;

Sallie Glenn and her husband, D. A. Glenn, of North Carolina (tenants in common, &c.).

Isaac E. Reeves, receiver of J. J. Hunt & Company.

James E. Deakins.

This December 24th, 1895.

I. E. REEVES, *Att'y.*
E. J. BAXTER, *Att'y.*

Without waiver of benefit of exception of any character, except the nature of service, we hereby acknowledge service of the within and foregoing citation for and on behalf of the following persons named therein, to wit:

C. R. Love, doing business as C. R. Love & Company.

W. J. Love, A. L. Estell, and Greer Machinery Co.

John Morris, Frank Crisp, and William Morris, partners composing the firm of Ashurst, Morris, Crisp & Company.

Frank Crisp, as an individual.

Edward Ardley, doing business as Ardley & Company.

Charles H. Bright and Charles H. Cox, partners under the firm name of Bates, Hendy & Company.

Frederick C. Mathieson, Frederick C. Mathieson, and James F. Mathieson, partners as F. C. Mathieson & Sons.

William A. Stone, William Cash, and Herbert A. Plumb, partners under the firm name of Cash, Stone & Plumb.

Bradbury, Wilkenson & Company, a corporation.

United Kingdom & Foreign Investment Company, a corporation.

A. R. Wing; John Epps, assignee of A. R. Wing.

Union Mortgage Company, a corporation.

The Commercial Bank of Scotland, a corporation.

London Real Estate Company, a corporation.

Lord Hampden.

Rev. Hugh Fleming.

Thomas Reid.

Sir Andrew Clark.

W. C. Prescott.

Lord Cloncurry.

Ernest S. Inman.

P. MacFayden.

J. Campbell Dick.

Alfred Bull.

Geo. W. Lakeman.

W. J. Brooks.

F. Denton.

Miss E. H. Robins.

W. Alcock.

S. C. WILLIAMS,
For the Parties Supra.

Dec'r 24, 1895.

Order of Severance.

Filed December 23rd, 1895. Alex. McMillan, Clerk.

In the Supreme Court of Tennessee.

C. M. McClung & Company *et al.*
vs.
Embreeville Freehold Land, Iron & Railway Company *et al.*

Upon the presentation of the application of Charles G. Blake, Rogers, Brown & Company, and Hull Coal & Coke Company for a writ of error to the Supreme Court of the United States from the judgment of the supreme court of Tennessee in the above-entitled cause, it was made sufficiently to appear that all of the other parties in like interest were notified of the purpose of the appellants named to apply for said writ and declined to join therein. It is thereupon ordered that a severance be granted to said Charles G. Blake, Rogers, Brown & Company, and Hull Coal & Coke Company, to whom alone the writ is allowed and only as against whom the supercedeas of the execution of the decree pronounced in said cause shall become effective.

Allowed December 19th, 1895.

D. L. SNODGRASS,
Chief Justice Supreme Court of Tennessee.

Bond.

Filed December 23rd, 1895. Alex: McMillan, Clerk.

Supreme Court of Tennessee.

C. M. McClung & Co. *et al.*
vs.
Embreeville Freehold Land, Iron & Railway Company *et al.* — No. —

Know all men by these presents that we, Charles G. Blake, Rogers, Brown & Company, Hull Coal & Coke Company, Tully R. Cornick, and Geo. W. Henderson, *and* held and firmly bound unto C. M. McClung & Company & others in the penal sum of two thousand five hundred dollars, to be paid to the said C. M. McClung & Company & others, their heirs and assigns; for which payment, well and truly to be made, we bind ourselves and each of us, and each and every of our several heirs, executors, and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals on this 19th day of December, 1895.

Whereas the above-named Charles G. Blake, Rogers, Brown & Company, and Hull Coal & Coke Company have prosecuted a writ of error to the United States Supreme Court, to be holden at Washington, to reverse the decree rendered in the above-entitled suit in said court by the judges of the supreme court of Tennessee:

Now, therefore, the condition of this obligation is such that if the above-named C. G. Blake, Rogers, Brown & Company, and Hull Coal & Coke Company shall prosecute said writ of error to effect and answer all damages and costs if they fail to make said writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CHARLES G. BLAKE. [SEAL.]
ROGERS, BROWN & CO. [SEAL.]
HULL COAL & COKE CO. [SEAL.]
TULLY R. CORNICK, *Attorney.* [SEAL.]
GEO. W. HENDERSON. [SEAL.]

Approved:
D. L. SNODGRASS,
Chief Justice Supreme Court of Tenn.

Circuit Court of the United States, Eastern District of Tennessee, Northern Division.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit,* } *ss:*

The President of the United States to the honorable the judges of the supreme court of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Tennessee, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between C. M. McClung & Company & others *vs.* The Embreeville Freehold Land, Iron & Railway Company & others, wherein Charles Groverman Blake, doing business as C. G. Blake; Archer Brown, Wm. A. Rogers, Daniel B. Meacham, M. Cochran Armour, and Wm. C. Herron, doing business as Rogers, Brown & Company, all citizens and residents of the State of Ohio, and the Hull Coal & Coke Company, a Virginia corporation and a citizen of and residing in the State of Virginia, are parties in interest and to said cause, wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of the said C. G. Blake, Rogers, Brown & Company, and the Hull Coal & Coke Company, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the — Monday of January next, in the said Supreme Court, to be then and there held,

that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 19th day of Dec., in the year of our Lord one thousand eight hundred and ninety-five.

[Seal of the Circuit Court of the District of East Tennessee.]

H. H. TAYLOR, *Clerk*,
By J. T. CARTER, *D. C.*

Allowed by—
D. L. SNODGRASS,
Chief Justice Sup. Ct. Tenn.

A true copy of the above and foregoing writ of error was lodged with me in the office of the clerk of the supreme court of Tennessee, at Knoxville, on December 23, 1895, at 4 o'clock p. m.

ALEX. McMILLAN,
Clerk of Supreme Court of Tennessee.

No. 101.

Brief of Plaintiffs in Error.

Filed Sept. 28, 1897.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 101.

C. G. Blake, Rogers, Brown & Company, and the Hull Coal and Coke Company, *Plaintiffs in Error*,

vs.

Calvin M. McClung, William P. Smith, William B. Keener, Franklin H. McClung, Jr., and Charles J. McClung, Jr., Partners as C. M. McClung & Co., et al.

In Error to the Supreme Court of the State of Tennessee.

HERBERT J. MAY,
TULLY R. CORNICK,
Attorneys for Plaintiffs in Error.

McGILL & WALLACE, LAW PRINTERS, Washington, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

C. G. BLAKE, ROGERS, BROWN & COMPANY, AND THE HULL COAL AND COKE COMPANY, PLAINTIFFS IN ERROR,

vs.

CALVIN M. McCLUNG, WILLIAM P. SMITH, WILLIAM B. KEENER, FRANKLIN H. McCLUNG, Jr., AND CHARLES J. McCLUNG, Jr., PARTNERS AS C. M. McCLUNG & Co., *et al.*

No. 101.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

STATEMENT.

The question presented in this case is whether the act of the General Assembly of the State of Tennessee, approved March 21, 1877 (Acts of Tennessee, 1877, p. 44, c. 31), is repugnant to, and in contravention of, the provisions of clause 1 of section 2 of Article IV of the Constitution of the United States, and to section 1 of Article

XIV of the amendments of said Constitution. The Record is printed upon a stipulation of the parties for the purpose of confining the argument to the Federal question.

The Embreeville Freehold Land, Iron, and Railway Company (limited) was incorporated under the laws of the Kingdom of Great Britain and Ireland, but, prior to the filing of the original bill in this case, had registered its charter in Tennessee under the act approved March 21, 1877, and began a mining and manufacturing business in the United States under the provisions of that act. (Rec., 1, par. 1.)

McClung & Company, and others, on June 20, 1893, filed a general creditors' bill against the company in the Chancery Court of Washington County, Tennessee, alleging its insolvency, and the said court sustained the general creditors' bill, appointed a receiver for the property in Tennessee, administered the affairs of the company in that State, and passed decrees adjudicating the rights and priorities of creditors. The question here is in respect to the preference given by the courts of the State, under the Tennessee statute, to creditors residing in Tennessee over creditors who resided in other States of the Union. (Rec., 1, par. 2.)

The plaintiffs in error, C. G. Blake, Rogers, Brown & Company (names of the members of the company given in full in paragraph 5, on page 21 of the Record), all residents of the State of Ohio, and the Hull Coal and Coke Company of the State of Virginia, were permitted to amend their several petitions for the purpose of alleging and raising the Federal question. (Rec., 37.)

The chancellor of the Washington County Chancery Court recognized the Federal question in his findings when he stated:

"As between non-residents of Tennessee, but citizens of the United States, and citizens of other countries, I find no precedents. * * * Creditors contracting with the Embreeville Company, as located and doing business in Tennessee, who are citizens of States or countries other than Great Britain, will share ratably in the assets to be administered here next after the Tennessee creditors, Pittsburg Company, and coke stopped in transit." (Rec., 40.)

The chancellor then entered a final decree, in which he declared the act of the General Assembly of Tennessee, approved March 21, 1877 (Acts of Tennessee, 1877, p. 44, c. 31), constitutional, and not repugnant to the Constitution of the United States, and adjudged the creditors of the Embreeville Company who resided in Tennessee to be entitled to priority of payment and satisfaction out of the assets of the company as against the creditors of said company residing in other States. (Rec., 43, pars. 5, 6; also pars. 11, p. 44; 13, p. 46; 14, 15, 16, p. 47.) The plaintiffs in error excepted to the part of the decree adjudging the act of the Tennessee Legislature of March 21, 1877, constitutional, and not repugnant to, nor in contravention of, the Constitution of the United States, and also to the part of the decree adjudging priority of payment to the Tennessee creditors over the creditors of other States of the Union. (Rec., 49, par. 20.) An appeal was taken from this final decree to the Supreme Court of Tennessee. (Rec., 49, par. 21.) The cause, however, reached the Court of Chancery

Appeals at Knoxville, Tenn., at its September Special Term, 1895, and that court entered a modified decree, from which the plaintiffs in error prayed and obtained an appeal to the Supreme Court of Tennessee. The decree affirmed the priority of payment of creditors who resided in Tennessee, but was modified as to creditors residing out of the State by placing creditors of other States and foreign countries upon the same footing. From this decree C. G. Blake, Rogers, Brown & Company, and the Hull Coal & Coke Company appealed to the Supreme Court of Tennessee. (Rec., 66.) It is apparent from the opinion that the Chancery Court of Appeals was rather desirous of avoiding the Federal question. The special judge who wrote the opinion, after stating, in effect, that the court was not called upon to decide the question because the constitutionality of the said act had been conceded in the court below, yet proceeded to a discussion of the subject to such an extent that it was found necessary in the Supreme Court of the State to specifically reverse the finding of the Chancery Court of Appeals on this point. (Rec., 63, 64, 69.) Although the Federal question, as the Record discloses, was properly raised, discussed, and decided against the plaintiffs in error in all of the courts of the State, yet if this had not been the case, and the Federal rights of the parties had been intentionally withheld from decision by the State courts, the Supreme Court would entertain jurisdiction.

Roby *v.* Colehour, 146 U. S., 153, 159, 160.

The plaintiffs in error appealed from the decree of the Chancery Court of Appeals to the Supreme Court of

Tennessee. (Rec., 66.) The decree of the Chancery Court of Appeals was affirmed by the Supreme Court of the State of Tennessee, and the act of March 21, 1877, of the General Assembly of the State of Tennessee was held not to be in contravention of the Constitution of the United States, in the following language:

"That the act of the General Assembly of Tennessee passed March 19, 1877, and approved March 21, 1877, chapter 31, entitled 'An act to declare the terms on which foreign corporations organized for mining or manufacturing purposes may carry on their business, and purchase, hold, and convey real and personal property in this State,' is in all respects a valid enactment and is not in contravention of paragraph 2, Article IV, or Article XIV, amendments to the Constitution of the United States, nor in contravention of any other provision of the Constitution of the United States; and the court further finds that said Court of Chancery Appeals erred in determining that the question of the construction of the said act was not properly presented to said court under the general appeals prosecuted therein, and that portion of the said findings of the Court of Chancery Appeals is reversed." (Rec., 69.)

An order of severance was entered by the Supreme Court of Tennessee, and the plaintiffs in error herein allowed to sue out and prosecute a writ of error as to their own respective interests; the writ of error was allowed. (Rec., 79.)

The act of the General Assembly of Tennessee which we contend is repugnant to, and in contravention of, the said provisions of the Constitution of the United States, reads as follows:

Acts of Tennessee, 1877, Chap. 31, Page 44.

An act to declare the terms on which foreign corporations organized for mining or manufacturing purposes may carry on their business, and purchase, hold, and convey real and personal property in this State.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That corporations chartered or organized under the laws of other States or countries, for the purpose of mining ores or coals, or of quarrying stones or minerals, of transporting the same, or erecting, purchasing, or carrying on works for the manufacture of metals, or of any articles made of or from metal, timber, cotton, or wool, or of building dwelling houses for their workmen and others, or gas works, or water works, or other appliances designed for the promotion of health, good order, or general utility, in connection with such mines, manufactories, and dwelling houses, may become incorporated in this State, and may carry on in this State the business authorized by their respective charters, or the articles under which they are or may be organized, and may enjoy the rights and do the things therein specified, upon the terms and conditions, and in the manner and under the limitation herein declared.

SEC. 2. *Be it further enacted,* That each and every corporation created or organized under or by virtue of any government other than that of this State, of the character named in the first section of this act, desiring to carry on its business in this State, must first file in the office of the Secretary of State a copy of its charter or articles of association, certified in the manner directed by law for the authentication of the statutes of the State or country under whose laws such corporation is chartered or organized, and must cause an abstract of the

same to be recorded in the office of the Register of each county in which such corporation proposes to carry on its business or to acquire any lands.

SEC. 3. *Be it further enacted*, That such corporations shall be deemed and taken to be corporations of this State, and shall be subject to the jurisdictions of the courts of this State, and may sue and be sued therein in the mode and manner that is, or may be, by law directed in the case of corporations created or organized under the laws of this State.

SEC. 4. *Be it further enacted*, That such corporations may purchase, acquire, and hold real estate in fee or any other interest less than fee, and personal property of every kind, as they may deem necessary or suitable for the carrying on of the business specified in their said charters or articles of association, filed as aforesaid with the Secretary of State, and may sell, lease and convey such real estate as natural persons may do. And the State of Tennessee does hereby release its right of escheat by virtue of the alien origin of such corporations, or the alienage or non-residence of the shareholders of such corporation, or any of them.

SEC. 5. *Be it further enacted*, That the corporations, and the property of all corporations coming under the provisions of this act, shall be liable for all the debts, liabilities and engagements of the said corporations, to be enforced in the manner provided by law, for the application of the property of natural persons to the payment of their debts, engagements and contracts. Nevertheless, creditors who may be residents of this State shall have a priority in the distribution of assets, or subjection of the same, or any part thereof, to the payment of debts over all simple contract creditors, being residents of any other country or countries, and also over mortgage or judgment creditors, for all debts,

engagements and contracts which were made or owing by the said corporations previous to the filing and registration of such valid mortgages, or the rendition of such valid judgments. But all such mortgages and judgments shall be valid, and shall constitute a prior lien on the property on which they are or may be charged as against all debts which may be incurred subsequent to the date of their registration or rendition. The said corporations shall be liable to taxation in all respects the same as natural persons resident in this State, and the property of its citizens is or may be liable to taxation, but to no higher taxation, nor to any other mode of valuation, for the purpose of taxation; and the said corporations shall be entitled to all such exemptions from taxation which are now or may be hereafter granted to citizens or corporations for the purpose of encouraging manufacturers in this State, or otherwise.

SEC 6. *Be it further enacted*, That such of said corporations as shall engage in the mining of coals, iron ore, or other minerals, and in the manufacture of iron and other metals, shall have the right to construct and maintain roads, bridges, canals, tramways, telegraph lines and railroads between their mines and their places of manufacture, and for purposes of inlet or outlet to or from any railroad now or hereafter to be constructed, or to any river or waterway at the point or place most convenient for its operation and its business, and for this purpose such a corporation may purchase or acquire the necessary rights of way by contract with the owner or owners of the said lands on which the right of way is desired.

SEC. 7. *Be it further enacted*, That all corporations coming under the provisions of this act, shall in good faith and truly, within one year after filing with the

Secretary of State the certified copy of the charter or articles of association, as hereinbefore provided, begin and proceed with the business described in the said charter or articles of association so filed, and shall in good faith continue the same under the powers of said corporation in this said charter or articles of association as in this act declared, it being a chief object of this act to secure the opening and development of the mineral resources of the State, and to facilitate the introduction of foreign capital, and upon the failure of any such corporation to commence in good faith to develop and work some portion of its property within this State within one year after filing its said charter or articles of association in the office of the Secretary of State, all rights and privileges conferred by this act shall lapse and become void and of no effect.

SEC. 8. *Be it further enacted*, That any corporation obtaining and having the privileges of this act may establish towns, villages or settlements for the use and residence of its employés, and others, on any lands acquired by virtue of this act; and until the population is sufficiently large for the formation of municipal corporations in any of such towns or villages, may establish such regulations for the government thereof as shall not be inconsistent with the laws of this State; and it shall not be lawful for any person or persons (except for medical uses, as evidenced by the written order of some duly certified medical practitioner), nor for any corporation, to distill, have, make, sell, barter, or give away, any spirituous liquor or intoxicating drink of any kind, whether described as "bitters," or by any other name that may be used to disguise its real nature, or to evade the provisions of this act, upon any lands acquired by any corporation under this act, nor within a radius of five miles (except within the boundaries of an incorpo-

rated town) from any mine or quarry, or of any furnace, rolling mill, foundry or factory of any kind established or purchased by any corporation under this act, so long as such mine, quarry, furnace, rolling mill, foundry or factory is actually worked, or held for the purpose of being worked, or whilst under construction, and all the provisions and restrictions of Chapter 112 of the Acts of the Legislature of Tennessee, 1871, passed 14th December, 1871, are hereby declared applicable to all corporations organized under this act, and all persons violating any of the provisions of this section of this act shall be punished as declared in the said act of 1871.

SEC. 9. *Be it further enacted*, That if any such charter or articles of association, or any part thereof, filed as aforesaid in the office of the Secretary of State, should be in contravention or violation of the laws of this State, all such parts thereof as may be found to be in conflict with the laws of this State shall be null and void.

SEC. 10. *Be it further enacted*, That this law shall take effect from the date of its passage, the public welfare requiring it.

Passed March 19, 1877.

EDWIN T. TALLIAFERRO,
Speaker of the House of Representatives.
HUGH M. MCADOO,
Speaker of the Senate.

Approved March 21, 1877.
JAMES D. PORTER,
Governor.

The assignments of error on behalf of the plaintiffs in error are as follows:

Assignments of Error.

Charles G. Blake, Rogers, Brown & Company, and the Hull Coal and Coke Company, by their solicitor, feeling themselves to be aggrieved by the findings and decree of the Supreme Court of Tennessee in the above-entitled cause, assign error thereto as follows, to wit:

I.

That the court erred in finding that the act passed by the General Assembly of Tennessee on March 19, 1877, and approved March 21, 1877, being chapter 31 of the Laws of Tennessee of 1877, defining the terms upon which foreign corporations organized for mining and manufacturing purposes might do business in Tennessee, was a valid enactment.

II.

That in the Chancery Court held at Jonesboro, in Washington County, State of Tennessee, being the court which had and exercised original jurisdiction in the above-entitled cause, the appellants herein specially set up and claimed that they were entitled to the privileges and immunities guaranteed in section 2, Article IV of the Constitution of the United States—namely, "the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States"—and that they were deprived of such privileges and immuni-

ties by the act of the General Assembly of Tennessee, approved March 21, 1877, above referred to, and also that their rights, privileges, and immunities as citizens of the United States were abridged by the provisions of the statute of the General Assembly of Tennessee, approved March 21, 1877, referred to above, under the provisions of section "1" of Article XIV of the amendments of the Constitution of the United States, and that they were also deprived of their property without due process of law by the enforcement of said invalid enactment of the General Assembly of the State of Tennessee, but the decision of said Chancery Court was against the rights, privileges, or immunities so set up and claimed by the appellants; and the same rights, privileges, or immunities so set up and claimed in the State Chancery Court of original jurisdiction were again set up and claimed by the appellants in the Supreme Court of the State of Tennessee, the highest court of the State of Tennessee in which a decision in this suit could be had, and the decision of said Supreme Court was against the rights, privileges, or immunities so set up and claimed by the appellants under the aforesaid provisions of the Constitution of the United States; all of which is hereby assigned as error.

III.

That the act of the General Assembly of Tennessee passed March 19, 1877, and approved March 21, 1877, and which was construed and interpreted, and the provisions of which said act were applied and enforced in this cause against these appellants, was and is in contra-

vention of the Constitution of the United States, in that said act grants privileges and immunities to citizens of Tennessee not common to other citizens of the United States.

IV.

That said act passed March 19, 1877, and approved March 21, 1877 (chapter 31 of the acts of the General Assembly of Tennessee passed in the year 1877), entitled "An act to declare the terms upon which foreign corporations organized for mining or manufacturing purposes may carry on their business, and purchase, hold, and convey real and personal property in this State," is in contravention of, and repugnant to, section "1," Article "XIV," of the amendments to the Constitution of the United States.

Wherefore these appellants pray that, for the errors assigned, said findings and decree may be reversed. (Rec., 66.)

BRIEF.

We think it clearly appears from the Record that the Federal question was affirmatively raised in all of the courts of the State to which the cause was presented, including the Supreme Court, which is the highest court of the State; and that it is therefore open in the Supreme Court of the United States for consideration and determination under section 709 of the Revised Statutes of the United States, and under the provision of section 5 of the Judiciary Act of March 3, 1891 (26 Stat., 826).

The Federal question—namely, the question of the repugnancy of the act of the General Assembly of the State of Tennessee, approved March 21, 1877 (Acts. Tenn., ch. 31, p. 44), to clause 1 of section 2 of Article IV, and section 1 of the Fourteenth Amendment of the Constitution of the United States—having been raised in the proper court of the State, at the proper time and in the proper way, and the question having been decided in the highest court of Tennessee having jurisdiction to decide the same, against the claim set up by the plaintiffs in error, and in favor of the validity of the statute of Tennessee aforesaid, the cause falls within the rule of a long line of decisions of this court in which it has entertained jurisdiction. The Federal question was directly involved in this cause so that the State court could not, and did not, enter its decree without deciding such question.

Sayward *v.* Denny (and cases cited), 158 U. S., 180, 183, 184;

Whitten *v.* Tomlinson, 160 U. S., 231, 238;

Connecticut, etc., *v.* Woodruff, 153 U. S., 689;

Insurance Co. *v.* Treasurer, 11 Wall., 204;

Chicago, Burlington, etc., R'd. *v.* Chicago, 166 U. S., 226; 237.

It will be observed that the question here presented is not one that affects the rights of a corporation, or the rights of procedure or legal process in the State courts, but it affects the immediate rights, privileges, and immunities of the plaintiffs in error as citizens of Ohio and Virginia, and also as citizens of the United States.

The statutes of the State, the validity of which is drawn in question, denies to these plaintiffs in error, who are not citizens of Tennessee but of other States of the Union, the right and privileges of collecting their claims against an insolvent corporation in the same manner as citizens of Tennessee are allowed to collect their claims against such corporation. The statute of the State makes an absolute discrimination in favor of citizens of Tennessee.

Section 5 of the Tennessee statute contains the discriminating provision against the plaintiffs in error in authorizing the distribution of the assets of the insolvent corporation, and this section alone, or a part of it, may be declared repugnant to the Constitution of the United States without affecting other section, or parts of the same section, of such statute, if it shall be the opinion of this court that the other sections, or parts of the same section, are valid. (Presser *v.* Illinois, 116 U. S., 252.) This section was followed by the court below in its decree making a distribution of the assets of the Embreeville corporation. It reads as follows:

"SEC. 5. *Be it further enacted*, That the corporations, and the property of all corporations coming under the provisions of this act, shall be liable for all the debts, liabilities and engagements of the said corporations, to be enforced in the manner provided by law, for the application of the property of natural persons to the payment of their debts, engagements, and contracts. Nevertheless, creditors who may be residents of this State shall have a priority in the distribution of assets, or subjection of the same, or any part thereof, to the payment of debts over all simple contract creditors, being residents of any

other country or countries, and also over mortgage or judgment creditors, for all debts, engagements, and contracts which were made or owing by the said corporations previous to the filing and registration of such valid mortgages, or the rendition of such valid judgments. But all such mortgages and judgments shall be valid, and shall constitute a prior lien on the property on which they are or may be charged as against all debts which may be incurred subsequent to the date of their registration or rendition. The said corporations shall be liable to taxation in all respects the same as natural persons resident in this State, and the property of its citizens is or may be liable to taxation, but to no higher taxation, nor to any other mode of valuation, for the purpose of taxation; and the said corporations shall be entitled to all such exemptions from taxation which are now or may be hereafter granted to citizens or corporations for the purpose of encouraging manufacturers in this State, or otherwise."

The provisions of the Constitution of the United States to which it is claimed the Tennessee statute is repugnant are printed here simply for convenience, and are as follows:

ARTICLE IV. *Section 2.* "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

ARTICLE XIV. *Section 1.* "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property

without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Supreme Court of Tennessee holds, by its affirmative opinion, that the other States of the Union occupy the position of "countries" to the State of Tennessee. It was necessary to construe the act of the General Assembly of Tennessee, here drawn in question, in this way, in order to make the decree of discrimination in favor of the creditors of its own State. As we do not represent any of the alien creditors, we shall not stop to discuss the question of comity between nations and "countries," for the reason that, in our opinion, the questions to be determined in this cause arise under the Constitution of the United States and relate to the rights, privileges, and immunities of citizens of respective States of the Union, and also to the rights, privileges, and immunities of citizens of the United States. It will be conceded, no doubt, that the British creditors of the Embreeville Company, an alien corporation in the first instance, have no such rights under the Constitution as the plaintiffs in error, who are citizens respectively of Ohio and Virginia, and of the United States. The rights of the alien creditors are not in issue here, inasmuch as they are not parties to this writ of error, and they are only referred to for the purpose of drawing attention to the distinction between the rights of our citizens under the Constitution of the United States and the rights of aliens, which are not in this case protected by the Constitution of the United States in the same manner that it protects citizens of the States and of the United States.

There are two propositions to be discussed in favor of the plaintiffs in error.

1. What are their rights as citizens of Ohio and Virginia in the State of Tennessee under clause 1 of section 2 of Article IV of the Constitution of the United States?

2. What are their rights as citizens of the United States in the State of Tennessee under section 1 of Article XIV (Fourteenth Amendment) of the Constitution of the United States?

First Proposition.

Under the first proposition "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." That means that the plaintiffs in error, who are citizens of the States of Ohio and Virginia, are entitled to *all* the privileges and immunities of a citizen *in* the State of Tennessee, who, in common with themselves, may have a claim against the insolvent Embreeville Company. The word "several," used in the above clause of the Constitution, means, according to Webster's International Dictionary, "separate, distinct, particular, single." So that the privileges and immunities to which the citizens of each State are entitled in their own respective States are the same privileges and immunities that they are entitled to receive in each of the other States of the Union, inasmuch as the word "several," used in the clause, is defined to mean each particular or single State of the Union. In other words, the plaintiffs in error are entitled to the

same privileges and immunities in the State of Tennessee, under the clause of the Constitution, which they are entitled to in the States of Ohio and Virginia, respectively.

In the case of Paul *v.* Virginia (8 Wall., 168–180), in which the statute of the State of Virginia was drawn in question as being in conflict with clause 1 of section 2 of Article IV of the Constitution, this court says:

"It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property, and in the pursuit of happiness, and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this. (Lemon *v.* The People, 20 New York, 607.) Indeed, without some provision of the kind, removing from the citizens of each State the disabilities of alienage in the other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists."

In Connor *v.* Elliott (18 Howard, 591), it is decided that the clause of the Constitution of the United States

which declares that "the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States," applies only to such privileges and immunities as grow out of citizenship. And it has been repeatedly held by this court that the protection designed by this clause has no application to a citizen of that State whose laws are complained of.

Bradwell *v.* The State, 16 Wall., 130–138.

In Ward *v.* Maryland (12 Wall., 418–430), where the same clause was under consideration, this court says:

"Attempt will not be made to define the words "privileges and immunities," or to specify the rights which they are intended to secure and protect, beyond what may be necessary to the decision of the case before the court. Beyond doubt, those words are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade, or business, without molestation; to acquire personal property; to take and hold real estate; to maintain actions in the courts of the State."

In the Slaughter House Cases (16 Wall., 36), this court, among other things, defines the difference between the rights of citizens of the States under the clause of the Constitution now under consideration, and the rights of citizens of the United States under the Fourteenth Amendment. In the opinion in that case privileges and immunities are said to embrace those privileges and immunities which are fundamental;

which belong by right to the citizens of all free governments, and which have at all times been enjoyed by citizens of the several States which compose the Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, the court says it would be more tedious than difficult to enumerate. The court then adopts, in the main, the definition of privileges and immunities announced in the case of Ward *v.* Maryland (12 Wall., 430), and states that such privileges and immunities embrace nearly every civil right for the establishment and protection of which organized government is instituted, and they are spoken of as rights belonging to the individual as a citizen of a State, and they have always been held to be the class of rights which the State governments were created to establish and secure. And the court quotes, with approval, from Paul *v.* Virginia (8 Wall., 180), the following language:

"The privileges and immunities secured to citizens of each State in the several States, by the provision in question, are those privileges and immunities which are common to the citizens in the latter States under their Constitution and laws, by virtue of their being citizens." (Pp. 76, 77.)

The court then makes the following concise declaration in reference to the constitutional provision now under consideration. It is so concise that we have placed it in italics. It is as follows:

"*Its sole purpose was to declare to the several States that whatever those rights, as you grant or establish them to your*

own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction." (P. 77.)

This court has always refrained from announcing merely abstract definitions of the privileges and immunities to which the citizens of each State are entitled to in the several States under section 2 of Article IV of the Constitution, and has confined its decisions to what it terms the salutary rule of looking only to the particular right which is asserted and presented for consideration and decision in the cause submitted. For this reason the Federal question here presented has never been passed upon by the Supreme Court.

In McCready *v.* Virginia (94 U. S., 391–395) this court says:

"By Article IV, section 2, of the Constitution, the citizens of each State are 'entitled to all privileges and immunities of citizens in the several States.' Mr. Justice Washington, in Corfield *v.* Coryell (4 Wash. C. C., 380), thought that this provision extended only to such privileges and immunities as are 'in their nature fundamental; which belong of right to the citizens of all free governments.' And Mr. Justice Curtis, in Scott *v.* Sandford (19 How., 580), described them as such 'as belonged to general citizenship.' But usually, when this provision of the Constitution has been under consideration, the courts have manifested the disposition, which this court did in Conner *v.* Elliott (18 How., 593), not to attempt to define the words, but 'rather to leave their meaning to be determined in each case upon a view of the particular rights asserted or denied therein.' This clearly is the

safer course to pursue, when, to use the language of Mr. Justice Curtis, in Conner *v.* Elliott, 'We are dealing with so broad a provision, involving matters not only of great delicacy and importance, but which are of such a character that any merely abstract definition could scarcely be correct, and a failure to make it so would certainly produce mischief.'" (P. 395.)

In Cole *v.* Cunningham (133 U. S., 107, 113, 114), this court says:

"The intention of section 2 of Article IV was to confer on the citizens of the several States a general citizenship, and to communicate all the privileges and immunities which the citizens of the same State would be entitled to under the like circumstances, and this includes the right to institute actions." (Pp. 113, 114.)

In the criminal case of McKane *v.* Dunston (153 U. S., 684–687), this court says:

"Whatever may be the scope of section 2 of Article IV—and we need not, in this case, enter upon a consideration of the general question—the Constitution of the United States does not make the privileges and immunities enjoyed by the citizens of one State the measure of the privileges and immunities to be enjoyed, as of right, by a citizen of another state under its Constitution and laws." (P. 687.)

This court has said that the object of clause 1 of section 2 of Article IV is to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship are concerned; * * * to inhibit discriminating legislation against them by other States; * * * to insure to

them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property; * * * to secure to them in other States the equal protection of their laws; * * * to remove from the citizens of each State the disabilities of alienage in other States, and give them equality of privileges with citizens of those States; * * * to maintain actions in the courts of any such State; * * * also that such privileges and immunities embrace nearly every civil right for the establishment and protection of which organized government is instituted, and are rights belonging to the individual as a citizen of a State, and which the State governments were created to establish and secure; * * * that they are the same privileges and immunities of the citizen of a State which are common to the citizens of other States, under their Constitution and laws, by virtue of being citizens; * * * that whatever rights are granted or established by a State for its own citizens, the same, neither more nor less, shall be the measure of the rights of citizens of other States within the jurisdiction of the State granting or establishing such rights; * * * that such privileges and immunities are rights of general citizenship, and include the right to institute actions.

The statute of Tennessee, the validity of which is now in question, is in conflict, either specially or generally, with all of the rights of the plaintiffs in error above enumerated. Of what benefit, for instance, is the right of the plaintiffs in error to bring or maintain suits in the courts of Tennessee, if the General Assembly of that State can, by the discriminating enactment now under

consideration, deprive them of the legitimate fruits of such suits? It seems to us that the act of the legislature of Tennessee embodies the worst species of class or discriminating legislation, and should not be allowed, therefore, to stand as valid.

Second Proposition.

The second proposition presents for discussion the rights of the plaintiffs in error under section 1 of the Fourteenth Amendment, which consists of two sentences, the first defining citizenship of the States and of the United States, and the second relating to privileges and immunities of citizens of the United States, to due process of law, and to the equal protection of the law. The part of the section to which special reference is made herein, reads as follows:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

This section was fully considered in the Slaughter House Cases (16 Wall., 36), but the court then suggested the difficulty and danger of attempting an authoritative definition of what it is for a State to deprive a person of life, liberty, or property without due process of law, within the meaning of the Fourteenth Amendment, and held that the annunciation of the principles which gov-

ern each case as it arises is the better mode of arriving at a sound definition. No doubt the same mode of practice applies equally to the other parts of the clause which relate to the laws of a State which shall abridge the privileges and immunities of citizens of the United States, or deny to any person within its jurisdiction the equal protection of the laws. The court, in passing upon the question of due process of law, uses the following language, to wit:

"It seems to us that a statute which declares in terms, and without more, that the full and exclusive title of a described piece of land, which is now in A, shall be, and is hereby, vested in B, would, if effectual, deprive A of his property without due process of law, within the meaning of the constitutional provision."

And the court significantly asks the question: Can a State make anything due process of law which by its own legislation it chooses to declare such?" And it answers the question by saying that to affirm the proposition "is to hold that the prohibition to the States is of no avail, or has no application where the invasion of private rights is affected under the forms of State legislation."

Davidson *v.* New Orleans, 96 U. S., 97, 100, 102.

The ruling of the court, as above stated, is in accordance with our contention here, which is, that the Legislature of Tennessee has enacted a law which, in effect, strictly speaking, interferes with due process of law in its own courts; it affords to the plaintiffs in error such due process up to the time of the entry of a decree in

the cause, but then, by its statute, abridges their privileges and immunities as citizens of the United States, and, subsequent to the entry of the decree, denies them due process of law in the collection of their claims, and also denies them the equal protection of the law in the State of Tennessee.

In Chicago, Burlington, etc., R. R. *v.* Chicago (166 U. S., 226, 234, 235), this court has reviewed the question of due process of law as applied to the taking of private property for public use; and it is there said:

"A State may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms for procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment. In determining what is due process of law regard must be had to substance, not to form."

The court then repeats the language in Davidson *v.* New Orleans (*supra*), which is quoted above, and states that the statute of a State legislature which takes the property from one person and gives it to another would be treated, not as an exertion of legislative power, but as a sentence—an act of spoliation.

Is not what is condemned by the Supreme Court in its language above precisely what has been done by the act of the General Assembly of Tennessee? The plaintiffs in error have claims, the right and justice of which have not been questioned, but, on the contrary, decrees have been entered in their favor for the sums due them,

respectively. But when the point is reached in the proceedings of the State court for the distribution of the assets of the insolvent corporation, the court, by its decree, formulated in accordance with the said statute of Tennessee, deprives them of all their rights to the property of such corporation, notwithstanding the adjudications in their favor, and turns it over to other litigants upon no other ground of right than that they are citizens of the State of Tennessee. Is not this an abridgment of the privileges and immunities of the plaintiffs in error who are citizens of the United States residing in the States of Ohio and Virginia? And is it not also a denial to them of due process of law and of the equal protection of the law in the State of Tennessee? The procedure of the State court, in effect, under the statute of Tennessee, and by judicial action, amounted to the taking of the property of the plaintiffs in error simply because they were citizens of States other than the State of Tennessee, and giving it to certain creditors of the insolvent corporation, simply because they were citizens of Tennessee, and for no other reason.

It is true, as a general proposition, that it is not within the scope of the Fourteenth Amendment to withhold from States the power of classification, and that if the laws enacted by State legislatures deal alike with all of a certain class they are not obnoxious to the charge of denial of equal protection, yet it is equally true that such classification can not be made arbitrarily. This applies to the present cause, for the reason that all debtors must be treated alike and given equal protection, which has not been done, but, on the contrary, the

plaintiffs in error have been arbitrarily discriminated against, both by the statute and the decree of the State court. They do not stand equal before the law, nor do they receive equal protection. The classification against the plaintiffs in error contained in the legislation of the General Assembly of Tennessee has no reasonable basis upon which to stand.

Gulf, Colorado, etc., R'y *v.* Ellis, 165 U. S., 150, 153, 155.

Due process of law, the equal protection of the laws and privileges and immunities are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government.

Duncan *v.* Missouri, 152 U. S., 377–382.

There may be no purpose upon the part of a legislature to violate the provisions of the Constitution of the United States, and yet a statute enacted by it, under the forms of law, may, by its necessary operation, be destructive of rights granted or secured by the Constitution, in which case the courts must sustain the supreme law of the land by declaring the statute unconstitutional and void.

Brimmer *v.* Rebman, 138 U. S., 78, 81;
Minnesota *v.* Barber, 136 U. S., 313–319.

In Hayes *v.* Missouri (120 U. S., 68–71) it is said that the Fourteenth Amendment to the Constitution of the United States does not prohibit legislation which is limited either in the objects to which it is directed or by

the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed. * * * Class legislation, discriminating against some and favoring others, is prohibited.

Hayes *v.* Missouri, 120 U. S., 68, 71, 72;
Barber *v.* Connolly, 113 U. S., 27–32.

We presume there is no impropriety in our reference to the fact that we are informed that the act of the Tennessee legislature, above set out, was passed at the instance, and for the benefit of Sir Thomas Hughes, the author of Tom Brown at Rugby, who had created under the English corporation act a corporation entitled "The English Board of Aid to American Land Ownership," having the purpose to establish a colony in Tennessee where the younger sons of the English nobility and gentility could come and acquire homes and live at less expense in a rural district than to be maintained by their families in an English colony or in the Kingdom of Great Britain and Ireland. So that, when this act was drawn the draftsman had in mind the fact that he was legislating touching alien corporations, and in the use of the term foreign country or countries, sister States could not have been in his mind in the slightest degree.

Respectfully submitted.

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Attorneys for Plaintiffs in Error.

No. 704.

Brief of Green for D. C.

FILED
NOV 4 1
JAMES H. McKEN

Filed Nov 4 1897

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 101.

C. G. Blake, Rogers, Brown & Company, and the Hull Coal and Coke Company, *Plaintiffs in Error.*

vs.

Calvin M. McClung, William P. Smith, William B. Keener, Franklin H. McClung, Jr., and Charles J. McClung, Jr., Partners as C. M. McClung & Co., et al.

In Error to the Supreme Court of the State of Tennessee.

JOHN W. GREEN,
Attorney for Defendant in Error.

S. A. MIMMACK & CO., PRINTERS AND BINDERS, KNOXVILLE.

—IN THE—

Supreme Court of the United States.

OCTOBER TERM, 1897.

C. G. BLAKE, ROGERS BROWN & COMPANY, AND THE HULL COAL & COKE COMPANY, PLAINTIFFS IN ERROR,

vs.

CALVIN M. McCLUNG, WILLIAM P. SMITH, WILLIAM B. KEENER, F. H. McCLUNG, JR., AND CHARLES J. McCLUNG, JR., PARTNERS AS C. M. McCLUNG & CO., ET AL.

No. 101.

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT OF THE CASE.

The Embreeville Freehold Land, Iron and Railway Company, Limited, was a foreign corporation organized under the laws of the Kingdom of Great Britain and Ireland. In the year 1890 in compliance with the laws of Tennessee, as contained in the act of the General Assembly passed March 19th, 1877, Ch. 31, approved March 21st, 1877, regulating the terms upon which foreign mining and manufacturing

companies might carry on business in that State, said corporation filed a certified copy of its charter in the office of the Secretary of State at Nashville, Tennessee, and caused an abstract of its charter to be registered in the Register's office of Washington County, Tennessee. The business of the Company was mining and manufacturing iron, and it owned valuable mines and real estate at and near the town of Embreeville in Washington County, Tennessee, at which place its managers' office was established and its business conducted. The Company maintained its home office in London, its managing director resided there, and after the bill hereafter referred to was filed in Tennessee, liquidation under the Company's acts of Great Britain was ordered and begun in London. Rec. 2.

In June, 1893, the Company having become financially involved and unable to meet its heavy current obligations as they matured, C. M. McClung & Co., and others, defendants in error in this cause, filed a general creditors' bill in the Chancery Court of Washington County, Tennessee, alleging insolvency and praying for the appointment of a Receiver. Such proceedings were had as that the bill was sustained and a Receiver appointed, and the creditors of the Embreeville Frechold Land, Iron and Railway Company, Limited, were required to make themselves parties and set up and prove their claims according to the usual practice in cases of such character. Three classes of creditors appeared, viz: residents of Tennessee, residents of other States in the Union outside of Tennessee, and residents of England. Rec. 1, 3, 20, 25, 28, 31

The Chancellor held that these several classes should be paid in the following order, viz: 1st, that residents of Tennessee were entitled to priority of satisfaction out of the

assets of the Company; 2nd, that next after residents of Tennessee, residents of other States or countries than Great Britain should share ratably in the assets, and 3rd, that the remainder should go to the residents of England. Rec. 39-40.

Upon appeal this decree was affirmed as to the residents of Tennessee, but modified by the Court of Chancery Appeals and the Supreme Court of Tennessee so as to provide that all non-resident creditors, whether residing in other States than Tennessee or in England, should share equally and ratably in the distribution of the funds of the Company, after the Tennessee residents were first paid in full. Rec. 66-70.

The plaintiffs in error C. G. Blake and Rogers, Brown & Co., residents of the State of Ohio, and the Hull Coal & Coke Co., a resident of the State of Virginia deny that Tennessee residents are entitled to priority of satisfaction and have prosecuted a writ of error to this Court for the purpose of reversing said decree.

The Statute Upon Which the Tennessee Courts Based Their Decree Giving Priority to Tennessee Creditors.

Counsel for plaintiffs in error at pages 6 to 10 of their brief have set out in full the act of the Legislature of Tennessee upon which the Courts of Tennessee based their decree giving priority to residents of Tennessee. It is the Act of 1877, Chapter 31, page 44, and its caption is as follows: "An Act to declare the terms on which foreign corporations organized for mining or manufacturing purposes may carry on their business and purchase, hold and convey real and personal property in this State."

It provides among other things that corporations organized under the laws of other States or countries for the purpose of mining ores, coal, etc., and manufacturing same, may become incorporated in Tennessee and carry on the business authorized by their respective charters by first filing a copy of such charter in the office of the Secretary of State and an abstract thereof in the Register's office of the County where it is proposed to carry on business. Upon so doing, it shall be deemed to be a Tennessee corporation and may sue and be sued the same as corporations created under the laws of said State; it may purchase, acquire and hold real and personal property, and the State releases its right of escheat by virtue of the alien origin of such corporation. Then follows Section 5, which is as follows, viz:

"Be it further enacted that the corporations and the prop-
"erty of all corporations coming under the provisions of this
"act, shall be liable for all the debts, liabilities and engage-
"ments of the said corporation to be enforced in the man-
"ner provided by law for the application of the property of
"natural persons to the payment of their debts, engage-
"ments and contracts. Nevertheless, creditors who may be
"residents of this State shall have a priority in the distribu-
"tion of assets, or subjection of the same or any part thereof
"to the payment of debts over all simple contract creditors,
"being residents of any other country or countries, and also
"over mortgage or judgment creditors, for all debts, en-
"gagements and contracts which were made or owing by
"said corporations previous to the filing and registration of
"such valid mortgages, or the rendition of such valid judg-
"ments. But all such mortgages and judgments shall be
"valid, and shall constitute a prior lien on the property on
"which they are or may be charged as against all debts

"which may be incurred subsequent to the date of their reg-
"istration or rendition. The said corporations shall be lia-
"ble to taxation in all respects the same as natural persons
"resident in this State, and the property of its citizens is or
"may be liable to taxation, but to no higher taxation, nor
"to any other mode of valuation, for the purpose of taxa-
"tion; and the said corporations shall be entitled to all such
"exemptions from taxation which are now or may be here-
"after granted to citizens or corporations for the purpose of
"encouraging manufacturers in this State, or otherwise."

The Grounds Upon Which Plaintiffs in Error Attack This Statute.

Plaintiffs in error in their assignments of error say that this Statute is invalid, and that the Supreme Court of Tennessee erred in adjudging that it gives residents of Tennessee priority over non-residents for the following reasons, to-wit:

1st.—Because it is repugnant to Section 2, Article IV, of the Constitution of the United States which provides that "the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States."

2nd.—Because it is repugnant to Section 1, Article XIV, of the Amendments of the Constitution of the United States providing among other things that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Rec. 66, 68.

Attention is called in this connection to the fact that when plaintiffs in error filed their petitions in the insolvent proceeding in the Chancery Court they only claimed that this act was repugnant to Section 8, Article I, of the Constitution which provides that Congress shall have power to regulate commerce with foreign nations and among the several State, and among the Indian tribes, and that afterwards they obtained leave of the Chancery Court to so amend their petition as to allege that said Statute was repugnant to Section 2, Article II of the Constitution.

Its supposed repugnancy to Section 1, Article XIV, was not discovered until the assignments of error in the Supreme Court of Tennessee were filed where the point is for the first time raised, Rec 24, 37, 66, and the contention in regard to the interstate commerce clause is altogether abandoned.

The Right of States to Regulate Foreign Corporations Doing Business Within Their Territory.

It is a well established principle of law that a State in the exercise of its sovereign power may impose upon foreign corporations as a condition of coming into or doing business within its territory such terms, limitations, restrictions and regulations as in its discretion it may think proper, provided they are not repugnant to the Constitution or laws of the United States.

"A corporation is an artificial being, invisible, intangible "and existing only in contemplation of law. Being a mere "creature of the law, it possesses only these properties which "the charter of its creation confers upon it, either expressly "or as incidental to its very existence."

"A corporation can have no legal existence out of the "boundaries of the sovereignty by which it is created. It "exists only in contemplation of law and by force of law; "and where that law ceases to operate and is no longer ob- "ligatory, the corporation can have no existence. It must "dwell in the place of its creation, and cannot migrate to "another sovereignty."

Bank of Augusta vs. Earle, 13 Pet. 519.

"The recognition of the existence of a foreign corpora- "tion even by other States, and the enforcement of its con- "tracts made therein depend purely upon the comity of "those States—a comity which is never extended where the "existence of the corporation or the exercise of its powers "are prejudicial to their interests or repugnant to their pol- "icy. Having no absolute right of recognition in other States, but depending for such recognition and the en- "forcement of its contracts upon their assent, it follows as a "matter of course, that such assent may be granted upon "such terms and conditions as those States may think prop- "er to impose. They may exclude the foreign corporation "entirely; they may restrict its business to particular local- ities, or they may exact such security for the performance "of its contracts with their citizens as in their judgment will "best promote the public interest. The whole matter rests "in their discretion.'

Paul vs. Virginia, 8 Wall, 181.
The LaFayette Ins. Co. vs. French, 18 How, 404.
Doyle vs. Continental Ins. Co., 94 U. S. 535.
Hooper vs. California, 155 U. S. 648.
Ducat vs. Chicago, 10 Wall, 410.
Noble vs. Mitchell, 164 U. S. 367.
Liverpool Ins. Co. vs. Massachusetts, 10 Wall, 566.
Philadelphia Fire Asso'n vs. New York, 119 U. S. 110.

In the case of Fritts vs. Palmer, 132 U. S., 282, the Colorado Constitution and Statute prescribing the manner in which foreign corporations might do business in that State came before the Court for construction. Among other provisions said Statute contains the following, viz:

"And no corporation doing business in the State incor-"porated under the laws of any other State, shall be per-"mitted to mortgage or pledge or otherwise encumber its "real or personal property situated in this State, to the in-"jury or exclusion of any citizens or corporations of this "State who are creditors of such foreign corporation, and "no mortgage by any foreign corporation except railroad "and telegraph companies, given to secure any debt created "in any other State shall take effect as against any citizen "or corporation of this State until all its liabilities due to "any person or corporation in this State at the time of re-"cording such mortgage have been paid and extin-"guished."

The Court after setting out the Statute says: "No ques-"tion is made in this case—indeed there can be no doubt—"as to the validity of these Constitutional and Statutory "provisions so far at least, as they do not directly affect "foreign or other interstate commerce."

The same effect is Cooper Mfg. Co. vs. Ferguson, 113 U. S., 727.

It will be observed that the Colorado Statute is quite similar in its provisions to the Tennessee Statute. Indeed the Colorado Statute is more stringent, for it provides that no foreign corporation shall mortgage its property to the injury or exclusion of citizens of that State. But under the Tennessee Statute mortgages are valid and constitute a prior lien on the property as against all debts incurred subsequent

to their registration. In Tennessee the Legislature does not attempt to disturb the vested rights or the security of non-resident creditors. Surely if the Court can say, as it did, of the Colorado Statute that there is no doubt as to its validity, it cannot deny the legality of the Statute now under consideration.

Corporations Are Not Citizens Within the Meaning of Article IV., Section 2, of the Constitution.

Judge Field in the case of Paul vs. Virginia, supra, referring to the clause of the Constitution which provides that the citizens of each "State shall be entitled to all the privileges and immunities of citizens in the several States," says, "the term citizen as there used applies only to natural "persons, members of the body politic owing allegiance to "the State, not to artificial persons created by the legisla- "ture, and possessing only the attributes which the legisla- "ture has prescribed. * * *But in no case which has come "under our observation either in the State or Federal "Courts, has a corporation been considered a citizen within "the meaning of the provisions of the Constitution."

Id. 177, 178.

Corporations are not citizens within the meaning of this clause.

Pembina Mining Co. vs. Pennsylvania, 125 U. S. 181.
Liverpool Ins. Co. vs. Massachusetts, 10 Wall, 566.

Even if not precluded on other grounds, it would seem that the principle here enunciated would be conclusive at least as to one of the plaintiffs in error, viz: The Hull Coal & Coke Co., which is a corporation created by the laws of Virginia. Rec. 25. There is nothing anywhere in the rec-

ord to show that this Company had ever complied in any respect with the law authorizing it to do business in Tennessee. But even if it had done so, it cannot invoke the Constitutional provision in question because neither it nor its debtor the Embreeville Freehold Land, Iron & Railway Company (Limited) are citizens within the meaning of said provision.

Every Person Dealing with a Corporation is Bound to take Notice of the Provisions of Its Charter.

It is a settled rule that a person who deals with a corporation must at his peril, take notice of its charter or articles of association. The rule does not rest upon the ground that a charter or general incorporation law is a public statute of which all persons are deemed to have notice. It is a rule based upon no technical doctrine but upon the necessities of the case. It applies to foreign corporations as well as to domestic corporations and to corporations chartered by private acts of the Legislature as well as to those whose charters are part of the general laws.

Morawetz on Corp., Vol. 2, Sec. 591.
Beach on Corp., Sec. 384.

"Every corporation necessarily carries its charter where-"ever it goes, for that is the law of its existence. It may be "restricted in the use of some of its powers while doing bus-"iness away from its corporate home, but every person who "deals with it everywhere is bound to take notice of the pro-"visions which have been made in its charter for the man-"agement and control of its affairs both in life and after dis-"solution."

Reefe vs. Rundle, 103 U. S., 222, 226.
Root vs. Wallace, 20 Fed. cases, 1167.

Pearce vs. Madison R. R., 21 How., 441.
The law enters into and forms a part of all contracts.
Brine vs. Insurance Co., 96 U. S., 627.

We maintain that the plaintiffs in error in this case ought not to have contracted with the Embreeville Freehold Land, Iron and Railway Company in Tennessee unless they intended to abide by the Tennessee law. They knew as a matter of law that the Embreeville Company, being a corporation, had only those rights and powers which its charter conferred, and they knew as a matter of law, that being a foreign corporation, the State of Tennessee had the right to impose such conditions upon and exact such security from it for the protection of residents of Tennessee as would best promote the public interest. This being true, they were put upon inquiry, and in legal contemplation knew before they contracted with the Embreeville Company, that residents of Tennessee were given priority in the distributon of its assets or subjection thereof to the payment of debts over all simple contract creditors, residents of any other country or countries

The XIV Amendment to the Constitution has no Application.

The freedom of the slave race and the protection and security of the newly made freeman and citizens was the purpose of this amendment. Mr. Justice Miller in the Slaughter-House cases, speaking of this amendment, says, while it is true that only the Fifteenth Amendment in term mentions the negro, "it is just as true that each of the other articles was addressed to the grievances of that race and designed to remedy them." The privileges and immunities guaranteed in this amendment to citizens of the United States was de-

fined in this opinion to be the right to the protection of the Federal Government over life and liberty, the right to peacefully assemble and petition for redress of grievances, the privilege of the writ of *habeas corpus*, the right to use the navigable waters of the United States, etc., as contradistinguished from the privileges and immunities secured to the citizens of the State by the second section of article 4 of the Constitution. The same opinion declares that the clause in this amendment which prohibits a State from denying to any person "within its jurisdiction the equal protecton of the laws" was directed against existing laws in the States where the newly emancipated negroes resided.

Slaughter House Cases, 16 Wall, 36.

The Fourteenth Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies.

Missouri vs. Lewis, 101 U. S., 22.

The phrase "due process of law" as used in this amendment seems never to have been defined by this Court. In the case of Davidson vs. New Orleans, 96 U. S., 104, it is said, "there exists some strange misconception of the scope "of this provision * * *In fact it would seem from the char- "acter of many of the cases before us and the arguments "made in them, that the clause under consideration is looked "upon as a means of bringing to the test of the decision of "this Court the abstract opinions of every unsuccessful liti- "gant in a State Court of the justice of the decision against "him and of the merits of the legislation on which such a "decision is founded."

The phrases, "law of the land," and "due process of law," appear to be synonymous, and in Cooley's Constitutional

Limitations the author treats them as meaning that judicial proceedings shall "proceed upon enquiry" and "render judgment only after trial." In other words "due process of law" requires that a party shall be properly brought before the Court and shall have the opportunity in Court to establish any fact which under the laws and constitution would be a protection to him or his property.

Corley's Const. Lim., Sec. 354, 369.
Hurtado vs. California, 110 U. S., 516.

Whenever the law operates equally and alike on all persons and property similarly situated equal protection cannot be said to be denied.

Wurts vs. Hoagland, 114 U. S., 606.
Railroad Co. vs. Richmond, 96 U. S., 521.
Walston vs. Nevin, 128 U. S., 578.

A Kansas statute abrogating the common law rule in regard to the negligence of a fellow servant came before this Court in the case of Missouri Railway vs. Mackey, 127 U. S. 205, upon the contention that it was obnoxious to the Fourteenth Amendment as taking property "without due process of law," and as depriving the railroad of "equal protection of the law." The Court says in regard to the first point that "it cannot be successfully contended that the "State may not prescribe the liabilities under which corpo- "rations created by its laws shall conduct their business in "the future," and on the second point that "equal protection" is not denied if all persons subject to it are treated alike under similar circumstances.

It is hard to see just how the plaintiffs in error hope to bring their case within the purview of this amendment. No one is seeking to reach their property. The property which the Courts of Tennessee decided should be subjected to the

claims of Tennessee creditors belonged to the Embreeville Freehold Land, Iron and Railway Company. As well might a creditor complain because the law gives to mechanics a lien and to heads of families a homestead. The contract is always made with knowledge of these favored rights, and with at least an implied assent to the preferences thus allowed. If the law had forced the plaintiffs in error to sell to the Embreeville Company and at the same time declared that their debts should be subordinated to those of the residents of Tennessee, or if it had singled out these plaintiffs in error or if it had singled out the residents of some particular State or States of the Union, there might be good ground for complaint.

Previous Holdings of Supreme Court of Tennessee on Act of 1877.

In the case of Young vs. South Tredagar Iron Co., 85 Tenn., 189, in determining the *situs* of the stock of a foreign corporation, the Court says, among other things: "We do "not think that a foreign corporation of the character defin-"ed in this act, they being mining and manufacturing corpo-"rations, are authorized to carry on business in this State, "except upon compliance with this act and upon the terms "of this act." The case of the State vs. Phoenix Ins. Co., 92 Tenn., 420, involved the question of the legality of a tax imposed upon foreign corporations and the Court construed and upheld the Statute.

See also, Cory Lumber Co. vs. Thomas, 92 Tenn., 587.
L. & N. Railroad vs. M. & T. Railroad, 92 Tenn., 681.
Butler vs. U. S. Building & Loan Ass'n., 97 Tenn., 679.
Insurance Co. vs. Kennedy, 86 Tenn., 711.

The Statutory Priority Applies only to "Residents."

The language used in the Statute in question is "Nevertheless, the creditors who *may be residents* of this State, shall have a priority in the distribution of assets, etc." No priority is attempted to be given to "citizens" of Tennessee. The Court will not construe "residents" to be the equivalent of "citizen" unless the record shows that the Courts of Tennessee have in this case treated those words as interchangeable, and have denied to a *citizen* of another State of the Union who was *residing* in Tennessee the benefit of the statutory priority. There is no attempt upon the part of plaintiffs in error to show that citizens of other States than Tennessee who were residing in Tennessee were denied the statutory priority accorded to residents of Tennessee.

It will be noticed that the statute does not grant priority to "permanent residents" of Tennessee. In the case of *Ward vs. Maryland*, 12 Wallace, 421, the Maryland statute then under consideration discriminated against persons who were not *permanent residents* of that State. Mr. Evarts, for plaintiff in error there, argued that the statute "makes the discrimination rest upon the very fact which alone determines, in case of citizens of the United States, whether a person is or is not a citizen of one State or another, *to-wit: permanent residents in a state.*" And the decision in that case, by fair inference, is based upon this construction of the term "permanent resident."

The term "resident" has a less extensive signification in Tennessee than has the term "domicile or citizen."

Foster vs. Hall, 4 Hum. (Tenn.) 346.

The term "resident" imparts less of fixity and permanency than "citizen" or even "inhabitants."

Frost vs. Brisbin, 19 Wend. (N. Y.) 11.
S. C. 32 Am. Dec., 423.
Savage vs. Scott, 45 Iowa, 130.
21 Am. and Eng. Ency. Law, 124, 125.

The distinction between a "resident" and a "citizen" has been taken in this Court, in respect of the right to maintain suits in the Federal Courts.

Continental Insurance Co. vs. Rhoads, 119 U. S., 237.
Everhart vs. Huntsville College, 120 U. S., 223.
Robertson vs. Cease, 97 U. S., 646.
Grace vs. Ins. Co. 109 U. S., 278.

The provisions of Art. 4, Sec. 2, of the Constitution, it has been held, do not apply to statutes discriminating along the line of residence in requirements of security for costs in suits.

Haney vs. Marshal, 9 Md., 194.
Nease vs. Capehart, 15 W. Va., 299.
Head vs. Daniels, 38 Kansas, 9.

Nor to statutes giving to resident plaintiffs a longer time within which to bring action than is given to non-residents.

Chenning Bank vs. Lowery, 93 U. S., 72.

The distinction is taken and discrimination is made along the line of residence in statutes granting exemptions, and in Statutes regulating the jurisdiction of local courts over causes of action; and they have been upheld on the ground that the discrimination is not between citizens, but between residents and non-residents.

Robertson vs. Ocean Co., 112 N. Y., 315.
And cases there cited.
6 Thomp. Corp., Sec. 8001.

The discrimination between residents and non-residents is validly made in attachment laws.

Pyrolusite Co. vs. Ward, 73 Ga., 491.
Campbell vs. Morris, 3 H. & McH. (Md.), 533.
Pennoyer vs. Neff, 95 U. S., 714.

A State has the power to confine the right to take fish from its tide waters to its own citizens, denying such right to citizens of other States.

McCready vs. Virginia, 94 U. S., 391.

Since there is a well defined distinction between a "resident" and a "citizen;" since this distinction is taken in Tennessee jurisprudence, is made in the Statute here called in question, and was not disregarded in the application of relief in this particular case, we submit that the Court should not treat the statute as discriminating against citizens of other States of the Union, and thus construing the Statute denounce it as unconstitutional.

The Right to Prefer Independent of the Statute.

It is a general principle of international law that every State has the right to control property within its jurisdiction, and will in event of insolvency appropriate the same to the payment of its own creditors before assenting that any part may be removed from the State.

Story, Conflict of Laws, Sec. 525.
Life Ass'n vs. Fassett, 102 Ill., 325.
Tinkham vs. Borst, 31 Barb. (N. Y.), 412.
Wait, Insol. Corp'ns, Secs. 326, 327.
Smith vs. Mutual Life Ins. Co., 3 Tenn., Chan. 502.
Same case on appeal, 6 Lea, 564.
Gilchrist vs. Cannon, 1 Cold., 581.
8 Am. & Eng. Ency. Law, 404.
And authorities there cited.

"Every State exercises to a greater or less extent, as it deeems expedient, the comity of giving effect to the insolvent proceedings of other States, except as it may be compelled to give them full effect by the Constitution of the United States Where the transfer of the debtor's property is the result of a judicial proceeding, as in the present case, there is no provision of the Constitution which requires the Courts of another State to carry it into effect; and, as a general rule, no State Court will do this to the prejudice of the citizens of its own State."

Reynolds vs. Adden, 136 U. S., 334.
Pennoyer vs. Neff, 95 U. S., 714.

In the case at bar, it is shown that the Embreeville Company had its home office in London, England, where liquidation of its affairs was ordered and begun. (Rec. p. 2.) The jurisdiction of the domicile of this Company would, presumably, administer all the assets not held in Tennessee. There is no principle of Constitutional or international law requiring the Courts of Tennessee to give effect to the insolvent proceedings pending there, or denying to them the right to administer the assets found in Tennessee for the benefit of those creditors residing in Tennessee. It may be that the assets in administration in the jurisdiction of the domicile will pay in full all creditors residing out of the State of Tennessee. In the absence of proof showing exhaustion of those assets without satisfaction of his claim in full, may a non-resident of Tennessee be heard to urge, on constitutional or other grounds, a right to share in the Tennessee assets? There is no attempt made by plaintiffs in error to show, in pleadings or proof, what sums they have collected or might have collected in the jurisdiction of the domicile, so that the Courts of Tennessee might equalize payments to them and other creditors, if that be required.

Decree Not Final.

The decree of the Supreme Court which may be found at page 68 of the record to reverse which this writ of error is prosecuted, remands the cause to the Chancery Court for further proceedings. In adjudicating the rights of plaintiffs in error, this decree puts them and the English creditors in the same category. The further proceedings contemplated by the remandment, undoubtedly among other things were that the Tennessee residents should be paid, and the remainder distributed ratably between plaintiffs in error and the other non-residents. Until this is done, there is nothing to show this Court that they have any ground of complaint against the decree. For all that appears in the record, enough may be derived from this source and from the liquidation in London to pay them in full. The decree is therefore not final and a writ of error will not lie.

U. S. Revised Statutes, Sec. 769.
Baker vs. White, 92 U. S., 176.
McComb vs. Knox County, 91 U. S., 1.

Alien Creditors May be Excluded.

It is conceded that the position taken by plaintiffs in error with respect to the alien creditors of the Embreeville Company is well founded. They cannot claim the benefit of either section of the United States Constitution relied upon by the plaintiffs in error as citizens of Ohio and Virginia. It was clearly within the power of the Legislature of Tennessee to make preference as against aliens; and the admission of plaintiffs in error to share with residents of Tennessee would not have the effect to admit along with them alien creditors who may not draw in question the validity of the Statute.

JOHN W. GREEN,
Attorney for Defendants in Error.

No. 101.

Brief of Ingersoll for Certain D...

FILED
NOV 4 189
JAMES H. McKENNEY

Filed Nov. 4, 1897.

Supreme Court of the United States.

C. G. BLAKE, et al.,
Plaintiffs in Error,
vs.
C. M. McCLUNG, et al.,
Respondents.

No. 101.

BRIEF FOR RESPONDENTS CLARKE & REID, Trustees.

There is no error in the decree of the Supreme Court of Tennessee.

Plaintiffs' contention requires the maintenance of two propositions: (1) that Section 5 of the Foreign Corporations Act of Tennessee (1877, Ch. 31, p. 44) and the decree of the Supreme Court enforcing same denies to plaintiffs, as citizens of Ohio and Virginia, and of the United States, privileges and immunities, or due process of law, or equal protection of the laws, granted to citizens of the State of Tennessee; and (2) that the State of Tennessee has no power or authority by legislation and adjudication to prescribe and enforce such conditions of admission and residence to a foreign corporation, and so administer the affairs of such corporation in insolvent liquidation by its Courts as to prefer the claims of resident creditors to those of non-residents.

Neither proposition is tenable; and, therefore, plaintiffs' contention must fail.

I.

Neither the Act nor the decree thereunder denies to plaintiffs any privileges or immunities as citizens of any State, or of the United States, nor does it deprive them of property without due process of law, nor deny them equal protection of the laws, nor does said act or decree give any priority or preference to citizens of Tennessee:

1. The preference complained of is not to *citizens*, but to "creditors who may be residents of this State * * * * * * over all simple contract creditors who may be residents of any other country or countries."

The Constitution forbids the denial of privileges and immunities solely on the ground of citizenship. The Act gives preference solely on the ground of residence. Residence and citizenship are not identical or synonymous. A person residing in Tennessee may be a citizen of another State, or even an alien, and have the benefits of this preference, as was given in this case to W. J. Love, the largest preferred creditor, (Rec., p. 45), though a subject of Queen Victoria residing in Tennessee. And a citizen of Tennessee, residing in the District of Columbia would be postponed under this Act to any alien resident.

2. Plaintiffs have not shown their citizenship, but merely their residence (Rec. p. 20). The allegation by the Hull Coal and Coke Company, "that it is a corporation created and established under the laws of the State of Virginia" is not sufficient.

This Court will not declare a State Statute unconstitutional unless it appears beyond reasonable doubt

(1) That plaintiff has the right to invoke the judgment of the Court thereon, and

(2) That the Statute is necessarily repugnant to the Federal Constitution.

People vs. R. R. Co. 15 Wend., 113.

II.

It is not an arbitrary and unwarranted exercise of governmental power for a State to protect the rights and interests of its own citizens; and, in so doing by regular proceedure, to control and dispose of property actually within its territorial jurisdiction. Such legislation and judicial action accords with the settled principles of international law and governmental policy.

Gilchrist vs. Cannon, 1 Cold., 587;
Allen vs. Bain, 2 Head, 106;
Smith vs. Insurance Co., 6 Lea, 567; (3 Tenn. Chy., 508);
Tinkham vs. Borst, 31 Barb., 412;
National Trust Co. vs. Miller, 33 N. J. Eq., 159.

Equal protection of the law is not denied by an act which operates alike upon all persons and all property.

Walston vs. Nethid, 128 U. S., 582;
Wurts vs. Hoagland 114 U. S., 606.

It is competent for a State to prescribe terms and conditions of admission, residence and conduct for a foreign corporation.

N. & W. Railroad Co. vs. Penna., 136 U. S., 114;
Phila. Fire Ass'n. vs. N. Y., 119 U. S., 110;
Runyan vs. Coster, 14 Peters, 129;
Merrick vs. Van Santvoord, 34 N. Y., 129.

And all persons, resident or non-resident, citizen or alien, dealing with such foreign corporation must take notice of these conditions and are bound by

them; and, as a general rule, a non-resident may not maintain an action against a foreign corporation.

Smith v. Mut. Life Ins. Co., 14 Allen, 336.

This Foreign Corporations Act cannot be repugnant to the XIV. Amendment, because no privilege or immunity of national citizenship is denied.

Slaughterhouse Cases, 16 Wall., 36;
Duncan v. Missouri, 152 U. S., 377.

Because plaintiffs do not show that they have been denied any privilege or immunity as citizens of other States, and the Statute complained of is but a proper exercise of governmental function over a foreign corporation, and the particular section complained of a proper provision for insolvent administration by due process and upon ample notice, said act is not obnoxious to Article 4, Section 2, of the Constitution; and plaintiffs' writ of error should be dismissed.

HENRY H. INGERSOLL,
Counsel.

No. 101 C.

Brief of Seymour for D. C.

NOV 8 19
JAMES H. McKENN

Filed Nov. 8, 1897.

Supreme Court of the United States.

OCTOBER TERM, 1897.

C. G. Blake, Rogers, Brown & Co., and the Hull Coal & Coke Co., Plaintiffs in Error,
—*vs.*—
Calvin M. McClung, William P. Smith, William B. Keener, F. H. McClung, Jr., and Charles J. McClung, Jr., Partners as C. M. McClung & Co., et al.

No. 101.

(16,141.)

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

BRIEF FOR LONDON TRUST CO., L'D.

CHARLES SEYMOUR,
Counsel.

OGDEN BRO'S & CO., PRINTERS, KNOXVILLE, TENN.

—IN THE—

Supreme Court of the United States.

OCTOBER TERM, 1897.

C. G. Blake, Rogers, Brown & Co., and the Hull Coal & Coke Co., Plaintiffs in Error,

—*vs.*—

Calvin M. McClung, William P. Smith, William B. Keener, F. H. McClung, Jr., and Charles J. McClung, Jr., Partners as C. M. McClung & Co., et al.

No. 101.

BRIEF FOR LONDON TRUST CO., L'D.

STATEMENT.

The case is stated in agreement, page 1 of Record, and in brief for plaintiff in error, and in brief of J. W. Green, counsel for some of defendants in error.

POINTS.

The sole point presented for the London Trust Company, Limited, a judgment creditor, is that the Tennessee Statute Section 5, Chapter 31 of Acts of 1877, is to be treated as an entirety, as construed by the Supreme Court of Tennesse.

The question presented by this appeal is limited to whether the Section 5 of Chapter 31 of Acts of the Tennessee Legislature, as construed by the Supreme Court of Tennessee, is in conflict with the Constitution of the United States.

On the principle, *expressio unius est exclusio alterius*, no corporation created under the laws of any other commonwealth than Tennessee was allowed to transact its business or hold property in Tennessee unless it complied with the following requirements :

It must file copy of its Charter or Articles of Incorporation with Secretary of State of Tennessee;

It must record abstract of Charter in each county where business is done;

It must hold its property in Tennessee subject to the claims of residents of Tennessee, who must be first satisfied before any other creditors could subject such property to their claims.

Having complied with the above requirements, the corporation bought and held property and transacted its business.

It is now sought by the plaintiff in error--

To have a different construction placed upon the Statute from that given it by the highest Court of the State making it a law.

To have the Statute reconstrued to make a distinction between the creditors resident in other States of this Union and creditors resident in foreign countries.

The purpose of the Statute is evident.

As was argued in the Tennessee Courts on the hearings of this case, the Legislature of Tennessee intended to prevent a foreign corporation (whether American or alien, no distinction was made) from establishing itself in Tennessee, obtaining credit on visible assets and, by means of real or fabricated indebtedness to persons or corporations at a distance, going

into insolvency, and by the great amount of its debts at a distance to sweep away the assets on which among its neighbors in Tennessee it had obtained credit. For such purpose, a creditor in California or New York was as far away as a creditor in England or France.

The decision of the Supreme Court of Tennessee is in line with this idea. The use of the word residents in place of the word citizen shows it; the decree, Record page 64, shows it, and the State of Tennessee having passed this Act so construed by its Supreme Court, the validity of the Act must stand or fall by the construction given. Either Section 5 is valid as it stands and with the construction given, Record page 64 and page 69, paragraphs 3 and 4, or all preference must be set aside.

The rule that "Statutes that are constitutional in "part only will be upheld so far as they are not in con- "flict with the Constitution provided the allowed and "prohibited parts are *separable*," has no application here as the only section, the only paragraph, which is attacked as unconstitutional is as follows:

"Nevertheless creditors who may be residents of "this state shall have a priority in the distribution of "assets or subjection of the same or any part thereof to "the payments of debts over all simple contract creditors "being resident of any other country or countries."

The Supreme Court of Tennessee has construed the words "country or countries" to mean all the world outside of Tennessee.

In view of the repeated holdings that all corporations are foreign corporations outside of the State in which they were created, and of the caption of the Act "To declare the terms on which foreign corporations may carry on their business;" and the further definition of Section 1.

Corporations chartered under the laws of other

states or countries; and the first words of Section 2—"each corporation created or organized under or by "virtue of any government other than that of this state;" clearly show the intent of the Legislature, and support the construction given to Section 5 by the Tennessee Supreme Court. To separate and reclassify creditors would be legislation. It is respectfully insisted that Section 5 must stand or fall on the construction given to it by the Supreme Court of the State where the Legislature passed it. The law is at present in Tennessee what the Tennessee Court adjudicates it to be. It is upon the Tennessee law so construed and so in force that question is raised in this Court.

This Court has uniformly adopted the decisions of the State respectively in the construction of their Statutes.

Green vs. Lessee of Neal, 6 Peters, 291.

Shelby vs. Guy, 11th Wheaton, cited in Christy vs. Pridgeon, 4 Wallace, 196.

Marbury vs. Kentucky Land Co., U. S. Cir. Ct. Appeals, and case cited, 62 Fed. Rep., 335.

CHARLES SEYMOUR,

Counsel.

BLAKE *v.* McCLUNG.

ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

No. 6. Submitted November 8, 1897. — Decided December 12, 1898.

Chapter 31 of the acts of Tennessee of 1877, entitled "An act to declare the terms on which foreign corporations organized for mining or manufacturing purposes may carry on their business, and purchase, hold and convey real and personal property in this State," provided that corporations organized under the laws of other States and countries, for purposes named in the act, might carry on within that State the business authorized by their respective charters, but that "creditors who may be residents of this State shall have a priority in the distribution of assets, or subjection of the same, or any part thereof, to the payment of debts over all simple contract creditors, being residents of any other country or countries, and also over mortgage or judgment creditors, for all debts, engagements and contracts which were made or owing by the said corporations previous to the filing and registration of such valid mortgages, or the rendition of such valid judgments." *Held*, that, as the litigation proceeded on the theory that plaintiffs in error were citizens of Ohio, where they resided, did business, and had offices, that question could not now be considered; and as the manifest purpose of the act was to give to all Tennessee creditors priority over all creditors residing out of that State, without reference to the question whether they were citizens or only residents in some other State or country, the act must be held to infringe rights secured to the plaintiffs in error, citizens of Ohio, by the provision of Sec. 2 of Art. IV of the Constitution declaring that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States, although, generally speaking, the State has the power to prescribe the conditions upon which foreign corporations may enter its territory for purposes of business.

It is not in the power of one State, when establishing regulations for the conduct of private business of a particular kind, to give its own citizens essential privileges, connected with that business, which it denies to citizens of other States.

When the general property and assets of a private corporation, lawfully doing business in a State, are in course of administration by the courts

of said State, creditors who are citizens of other States are entitled, under the Constitution of the United States, to stand upon the same plane with creditors of like class who are citizens of such State, and cannot be denied equality of right simply because they do not reside in that State, but are citizens residing in other States of the Union.

While the members of a corporation are, for purpose of suit by or against it in the courts of the United States, to be conclusively presumed to be citizens of the State creating it, the corporation itself is not a citizen within the meaning of the provision of the Constitution that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

The said statute of Tennessee, so far as it subordinates the claims of private business corporations not within the jurisdiction of that State (although such private corporations may be creditors of a corporation doing business within the State under the authority of that statute) to the claims against the latter corporation of creditors residing in Tennessee, is not a denial of the equal protection of the laws secured by the Fourteenth Amendment to persons within the jurisdiction of the State, however unjust such a regulation may be deemed.

THE case is stated in the opinion.

Mr. Heber J. May and *Mr. Tully R. Cornick* for plaintiffs in error.

Mr. John W. Green for defendants in error.

Mr. Henry H. Ingersoll for Clarke & Reid.

Mr. Charles Seymour for the London Trust Company.

MR. JUSTICE HARLAN delivered the opinion of the court.

This writ of error brings up for review a final judgment of the Supreme Court of Tennessee sustaining the validity of certain provisions of a statute of that State passed March 19, 1877, c. 31.

The chief object of the statute was declared to be to secure the development of the mineral resources of the State and to facilitate the introduction of foreign capital. § 7.

It provides, among other things, that "corporations chartered or organized under the laws of other States or countries, for the purpose of mining ores or coals, or of quarrying stones

or minerals, of transporting the same, or erecting, purchasing or carrying on works for the manufacture of metals, or of any articles made of or from metal, timber, cotton or wool, or of building dwelling houses for their workmen and others, or gas works, or water works, or other appliances designed for the promotion of health, good order or general utility, in connection with such mines, manufactories and dwelling houses, may become incorporated in this State, and may carry on in this State the business authorized by their respective charters, or the articles under which they are or may be organized, and may enjoy the rights and do the things therein specified, upon the terms and conditions, and in the manner and under the limitation herein declared." § 1.

The second section provides for the filing in the office of the Secretary of State by "each and every corporation created or organized under or by virtue of any government other than that of this State, of the character named in the first section of this act, desiring to carry on its business" in the State, of a copy of its charter or articles of association, and the recording of an abstract of the same in the office of the register of each county in which the corporation proposes to carry on its business or to acquire any lands. § 2.

The third section declares that "such corporations shall be deemed and taken to be corporations of this State, and shall be subject to the jurisdictions of the courts of this State, and may sue and be sued therein in the mode and manner that is, or may be, by law directed in the case of corporations created or organized under the laws of this State." § 3.

The fifth section provides:

"§ 5. That the corporations, and the property of all corporations coming under the provisions of this act, shall be liable for all the debts, liabilities and engagements of the said corporations, to be enforced in the manner provided by law, for the application of the property of natural persons to the payment of their debts, engagements and contracts. Nevertheless, creditors who may be *residents of this State* shall have a *priority in the distribution of assets*, or subjection of the same, or any part thereof, to the payment of debts over all simple

contract creditors, being residents of *any other country or countries*, and also over mortgage or judgment creditors, for all debts, engagements and contracts which were made or owing by the said corporations previous to the filing and registration of such valid mortgages, or the rendition of such valid judgments. But all such mortgages and judgments shall be valid, and shall constitute a prior lien on the property on which they are or may be charged as against all debts which may be incurred subsequent to the date of their registration or rendition. The said corporations shall be liable to taxation in all respects the same as natural persons resident in this State, and the property of its citizens is or may be liable to taxation, but to no higher taxation, nor to any other mode of valuation, for the purpose of taxation; and the said corporations shall be entitled to all such exemptions from taxation which are now or may be hereafter granted to citizens or corporations for the purpose of encouraging manufacturers in this State, or otherwise." Acts of Tennessee 1877, p. 44.

The case made by the record is substantially as follows:

The Embreeville Freehold Land, Iron and Railway Company, Limited — to be hereafter called the Embreeville Company — was a corporation organized under the laws of Great Britain and Ireland for mining and manufacturing purposes. In 1890 it registered its charter under the provisions of the above statute, and established a manager's office in Tennessee. It purchased property and did a mining and manufacturing business there, transacting its affairs in this country at and from its Tennessee office.

On the 20th day of June, 1893, C. M. McClung & Co. and others filed an original general creditors' bill in the Chancery Court of Washington County, Tennessee, against this company and others, alleging its insolvency and default in meeting and discharging its current obligations; charging that it had made a conveyance in trust of certain personal property in fraud of the rights of its other creditors, and asking the appointment of a receiver and the administration of its affairs as an insolvent corporation. The court took jurisdiction of the corporation, sustained the bill as a general creditors' bill, appointed

a receiver of its property in Tennessee, administered its affairs in that State, and passed a decree adjudicating the rights and priorities of certain creditors.

No question is made in respect to the amount due to any one of the creditors whose claims were presented.

The company maintained its home office in London, its managing director resided there, and after this suit was instituted liquidation under the Companies' Acts of Great Britain was there ordered and begun.

There were holders of debentures executed by the British company whose claims were not specifically adjudicated in the decree below. The original debenture issue amounted to $500,000, and another issue, subsequent in time, and in respect of which priority in right was claimed, amounted to $125,000. All the holders of those issues are non-residents of Tennessee and of the United States. There was also a general trade indebtedness aggregating about $90,000 due by the company to residents of Great Britain. Those claims were specifically adjudicated by the decree.

Among the creditors of the company at the time this suit was instituted were the plaintiffs in error, namely: C. G. Blake, whose residence and place of business was in Ohio; Rogers, Brown & Company, the members of which also resided in Ohio and carried on business in that State; and the Hull Coal & Coke Company, a corporation of Virginia. In the intervening petitions filed by those creditors it was averred that the plaintiffs in the general creditor's bill, residents of Tennessee, claimed priority of right in the distribution of the assets of the insolvent corporation over other creditors of the corporation "citizens of the United States, but not of the State of Tennessee;" and that the said statute was unconstitutional so far as it gave preferences and benefits to the plaintiffs or other citizens of Tennessee over the petitioners or other citizens of the United States.

By the final decree of the Chancery Court of Washington County, it was, among other things, adjudged that the act of 1877 was constitutional; that all of the creditors of the Embreeville Company residing in Tennessee were entitled to *priority*

of satisfaction out of its assets (after the payment out of the proceeds of the real estate of the claim of the Pittsburgh Iron & Steel Engineering Company) as against its other creditors who were "residents and *citizens of other States* of the United States or other countries;" that the creditors who were "*citizens of other States* of the United States, and who contracted with the company as located and doing business in Tennessee, are entitled to share ratably in its assets, being administered in this cause next after the payment of the Pittsburgh Iron & Steel Engineering Company *and the Tennessee creditors*."

Upon appeal to the Chancery Court of Appeals the decree of the Chancery Court was reversed in certain particulars. In the findings of the Chancery Court of Appeals it was stated that the Chancery Court of Washington County adjudged, among other things, that "under the act of 1877 (which was adjudged constitutional) all the creditors of said Embreeville Company residing in Tennessee are entitled to priority of satisfaction out of the assets of the Embreeville Company (after the payment out of the proceeds of the real estate of the claim of the Pittsburgh Iron & Steel Engineering Co.) as against the other creditors of said company who are non-residents and citizens of other States of the United States or other countries; that the other creditors of the Embreeville Company who are *citizens of other States of the United States*, and who contracted with the said Embreeville Company as located and doing business in the State of Tennessee, are entitled to share ratably in the assets of the defendant Embreeville Company being administered in this cause after the payment of the Pittsburgh Iron & Steel Engineering Company and the Tennessee creditors (except the coke stopped *in transitu*)." And the decree in the Chancery Court of Appeals contained, among other provisions, the following: "That all of the holders and owners of the debenture bonds of the company are simple contract creditors of said company, and stand upon the same footing in reference to the distribution of the assets of the company as all other of its creditors residing out of the State of Tennessee;" and that "the portion of the chancellor's decree giving priority of payment to such of the creditors of

said company who reside in the United States of America, but not in the State of Tennessee, and to such creditors now residents of Tennessee who dealt with the company in relation to its Tennessee office, over all alien creditors of said company, be, and the same is hereby, reversed, it being here adjudged that all the creditors of said company residing out of the State of Tennessee must share equally and ratably in the distribution of the funds of said company *after the Tennessee creditors shall have been paid in full.*"

The cause was carried to the Supreme Court of Tennessee, and so far as the plaintiffs in error are concerned was heard in that court upon appeal from the Chancery Court of Appeals, as well as upon writs of error to the Chancery Court.

It was adjudged by the Supreme Court of the State that the act of March 19, 1877, was in all respects a valid enactment, and not in contravention of paragraph 2 of Article IV or of the Fourteenth Amendment of the Constitution of the United States, nor in contravention of any other provision of the National Constitution; that all of the holders and owners of the debenture bonds of the Embreeville Company were simple contract creditors of the company, and stood upon the same footing with reference to the distribution of its assets as all of its other creditors who "reside out of the State of Tennessee," whether they be residents of other States or of the Kingdom of Great Britain; that all of the creditors of the Embreeville Company "who resided in the State of Tennessee" are entitled to priority of payment out of all of the assets of said company, both real and personal, over all of the other creditors of said company who do not reside in the State of Tennessee, whether they be residents of other States of the United States or of the Kingdom of Great Britain; that all of the creditors of the Embreeville Freehold Land, Iron & Railway Company who reside out of the State of Tennessee, whether they reside in other States of the United States or in the Kingdom of Great Britain, have the right and must share equally and ratably in the distribution of said funds of the said company after the residents of the State of Tennessee shall have been first paid in full.

The plaintiffs in error contend that the judgment of the state court, based upon the statute, denies to them rights secured by the second section of the Fourth Article of the Constitution of the United States providing that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," as well as by the first section of the Fourteenth Amendment, declaring that no State shall "deprive any person of life, liberty or property without due process of law," nor "deny to any person within its jurisdiction the equal protection of the laws."

We have seen that by the third section of the Tennessee statute corporations organized under the laws of other States or countries, and which complied with the provisions of the statute, were to be deemed and taken to be corporations of that State; and by the fifth section it is declared, in respect of the property of corporations doing business in Tennessee under the provisions of the statute, that creditors who are residents of that State shall have a priority in the distribution of assets, or the subjection of the same, or any part thereof, to the payment of debts, over all simple contract creditors, being residents of any other country or countries.

The suggestion is made that as the statute refers only to "residents," there is no occasion to consider whether it is repugnant to the provision of the National Constitution relating to citizens. We cannot accede to this view. The record shows that the litigation proceeded throughout upon the theory that the plaintiffs in error, Blake and the persons composing the firm of Rogers, Brown & Co., were citizens of Ohio, in which State they resided, transacted business and had their offices, and that the plaintiff in error, the Hull Coal and Coke Company, was a corporation of Virginia. The intervening petition of the individual plaintiffs in error, as we have seen, states that they were residents of Ohio, engaged in business in that State, their residence, offices and places of business being at the city of Cincinnati, and that they were citizens of the United States, and not citizens of Tennessee. Although these allegations might not be sufficient to show that those parties were citizens of Ohio within the meaning of the statute

regulating the jurisdiction of the Circuit Courts of the United States, (*Robertson* v. *Cease*, 97 U. S. 646), they may be accepted as sufficient for that purpose in the present case, no question having been made in the state court that the individual plaintiffs in error were not citizens but only residents of Ohio. Looking at the purpose and scope of the Tennessee statute, it is plain that the words "residents of this State" refer to those whose residence in Tennessee was such as indicated that their permanent home or habitation was there, without any present intention of removing therefrom, and having the intention, when absent from that State, to return thereto; such residence as appertained to or inhered in citizenship. And the words, in the same statute, "residents of any other country or countries" refer to those whose respective habitations were not in Tennessee, but who were citizens, not simply residents, of some other State or country. It is impossible to believe that the statue was intended to apply to creditors of whom it could be said that they were only residents of other States, but not to creditors who were citizens of such States. The State did not intend to place creditors, citizens of other States, upon an equality with creditors, citizens of Tennessee, and to give priority only to Tennessee creditors over creditors who resided in, but were not citizens of, other States. The manifest purpose was to give to all Tennessee creditors priority over all creditors residing out of that State, whether the latter were citizens or only residents of some other State or country. Any other interpretation of the statute would defeat the object for which it was enacted. We must therefore consider whether the statute infringes rights secured to the plaintiffs in error, citizens of Ohio, by the provision of the second section of Article IV of the Constitution of the United States declaring that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Beyond question, a State may through judicial proceedings take possession of the assets of an insolvent foreign corporation within its limits, and distribute such assets or their proceeds among creditors according to their respective rights. But may it exclude citizens of other States from such distri-

bution until the claims of its own citizens shall have been first satisfied? In the administration of the property of an insolvent foreign corporation by the courts of the State in which it is doing business, will the Constitution of the United States permit discrimination against individual creditors of such corporations because of their being citizens of other States, and not citizens of the State in which such administration occurs?

These questions are presented for our determination. Let us see how far they have been answered by the former decisions of this court.

This court has never undertaken to give any exact or comprehensive definition of the words "privileges and immunities" in Article IV of the Constitution of the United States. Referring to this clause, Mr. Justice Curtis, speaking for the court in *Conner* v. *Elliott*, 18 How. 591, 593, said: "We do not deem it needful to attempt to define the meaning of the word *privileges* in this clause of the Constitution. It is safer, and more in accordance with the duty of a judicial tribunal, to leave its meaning to be determined, in each case, upon a view of the particular rights asserted and denied therein. And especially is this true when we are dealing with so broad a provision, involving matters not only of great delicacy and importance, but which are of such a character that any merely abstract definition could scarcely be correct; and a failure to make it so would certainly produce mischief." Nevertheless, what has been said by this and other courts upon the general subject will assist us in determining the particular questions now pressed upon our attention.

One of the leading cases in which the general question has been examined is *Corfield* v. *Coryell*, decided by Mr. Justice Washington at the circuit. He said: "The inquiry is, what are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, *fundamental;* which belong, of right, to the citizens of all free governments, and which have, at all times, been enjoyed by the citizens of the several States which compose this Union from the time of their becoming free, independent and sov-

ereign. What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be comprehended under the following general heads: protection by the Government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the Government may justly prescribe for the general good of the whole. The right of a citizen of one State to pass through or to reside in any other State for the purposes of trade, agriculture, professional pursuits or otherwise; to claim the benefit of the writ of *habeas corpus;* to institute and maintain actions of any kind in the courts of the State; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the State, may be mentioned as some of the particular privileges and immunities of citizens, which are clearly embraced by the general description of privileges deemed to be fundamental; to which may be added, the elective franchise, as regulated and established by the laws or constitution of the State in which it is to be exercised. These, and many others which might be mentioned, are, strictly speaking, privileges and immunities, and the enjoyment of them by the citizens of each State in every other State was manifestly calculated (to use the expression of the preamble to the corresponding provision in the old Articles of Confederation) 'the better to secure and perpetuate mutual friendship and intercourse among the people of the different States of the Union.'" 4 Wash. C. C. 371, 380.

These observations of Mr. Justice Washington were made in a case involving the validity of a statute of New Jersey regulating the taking of oysters and shells on banks or beds *within* that State, and which excluded inhabitants and residents of other States from the privilege of taking or gathering clams, oysters or shells on any of the rivers, bays or waters *in* New Jersey, not wholly owned by some person residing in the State. The statute was sustained upon the ground that it only regulated the use of the common property

of the citizens of New Jersey, which could not be enjoyed by others without the tacit consent or the express permission of the sovereign having the power to regulate its use. The court said: "The oyster beds belonging to a State may be abundantly sufficient for the use of the citizens of that State, but might be totally exhausted and destroyed if the legislature could not so regulate the use of them as to exclude the citizens of the other States from taking them, except under such limitations and restrictions as the laws may prescribe."

Upon these grounds rests the decision in *McCready* v. *Virginia*, 94 U. S. 391, 395, sustaining a statute of Virginia prohibiting the citizens of other States from planting oysters in a river in that State where the tide ebbed and flowed. Chief Justice Waite, speaking for the court in that case, said: "These [the fisheries of the State] remain under the exclusive control of the State, which has consequently the right, in its discretion, to appropriate its tide waters and their beds to be used by its people as a common for taking and cultivating fish, so far as it may be done without obstructing navigation. Such an appropriation is in effect nothing more than a regulation of the use by the people of their common property. The right which the people of the State thus acquire comes not from their citizenship alone, but from their citizenship and property combined. It is in fact a property right, and not a mere privilege or immunity of citizenship." Consequently, the decision was that the citizens of one State were not invested by the Constitution of the United States "with any interest in the common property of the citizens of another State."

In *Paul* v. *Virginia*, 8 Wall. 168, 180, the court observed that "it was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same

freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this. *Lemmon* v. *The People*, 20 N. Y. 607. Indeed, without some provision of the kind, removing from the citizens of each State the disabilities of alienage in the other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists."

Ward v. *Maryland*, 12 Wall. 418, 430, involved the validity of a statute of Maryland requiring all traders, not being permanent residents of the State, to take out licenses for the sale of goods, wares or merchandise in Maryland, other than agricultural products and articles there manufactured. This court said: "Attempt will not be made to define the words 'privileges and immunities,' or to specify the rights which they are intended to secure and protect, beyond what may be necessary to the decision of the case before the court. Beyond doubt those words are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade or business without molestation; to acquire personal property, to take and hold real estate, to maintain actions in the courts of the State, and to be exempt from any higher taxes or excises than are imposed by the State upon its own citizens. Comprehensive as the power of the States is to lay and collect taxes and excises, it is nevertheless clear, in the judgment of the court, that the power cannot be exercised to any extent in a manner forbidden by the Constitution; and inasmuch as the Constitution provides that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States, it follows that the defendant might lawfully sell, or offer or expose for sale, within the district described in the

indictment, any goods which the permanent residents of the State might sell, or offer or expose for sale in that district, without being subjected to any higher tax or excise than that exacted by law of such permanent residents."

In the *Slaughter-house cases*, 16 Wall. 36, 77, the court, referring to what was said in *Paul* v. *Virginia*, above cited, in reference to the scope and meaning of section 2 of Article IV of the Constitution, said: "The constitutional provision there alluded to did not create those rights which it called privileges and immunities of citizens of the States. It threw around them in that clause no security for the citizen of the State in which they were claimed or exercised. Nor did it profess to control the power of the state governments over the rights of its own citizens. Its sole purpose was to declare to the several States, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction."

In *Cole* v. *Cunningham*, 133 U. S. 107, 113, 114, this court cited with approval the language of Justice Story, in his Commentaries on the Constitution, to the effect that the object of the constitutional guarantee was to confer on the citizens of the several States "a general citizenship, and to communicate all the privileges and immunities which the citizens of the same State would be entitled to under like circumstances, and this includes the right to institute actions."

These principles have not been modified by any subsequent decision of this court.

The foundation upon which the above cases rest cannot however stand, if it be adjudged to be in the power of one State, when establishing regulations for the conduct of private business of a particular kind, to give its own citizens essential privileges connected with that business which it denies to citizens of other States. By the statute in question the British company was to be deemed and taken to be a corporation of Tennessee, with authority to carry on its business in that State. It was the right of citizens of Tennessee to deal with

it, as it was their right to deal with corporations created by Tennessee. And it was equally the right of citizens of other States to deal with that corporation. The State did not assume to declare, even if it could legally have declared, that that company, being admitted to do business in Tennessee, should transact business only with citizens of Tennessee or should not transact business with citizens of other States. No one would question the right of the individual plaintiffs in error, although not residents of Tennessee, to sell their goods to that corporation upon such terms in respect of payment as might be agreed upon, and to ship them to the corporation at its place of business in that State. But the enjoyment of these rights is materially obstructed by the statute in question; for that statute, by its necessary operation, excludes citizens of other States from transacting business with that corporation upon terms of equality with citizens of Tennessee. By force of the statute alone, citizens of other States, if they contracted at all with the British corporation, must have done so subject to the onerous condition that if the corporation became insolvent its assets in Tennessee should first be applied to meet its obligations to residents of that State, although liability for its debts and engagements was "to be enforced in the manner provided by law for the application of the property of natural persons to the payment of their debts, engagements and contracts." But, clearly, the State could not in that mode secure exclusive privileges to its own citizens in matters of business. If a State should attempt, by statute regulating the distribution of the property of insolvent individuals among their creditors, to give priority to the claims of such individual creditors as were citizens of that State over the claims of individual creditors, citizens of other States, such legislation would be repugnant to the Constitution upon the ground that it withheld from citizens of other States as such, and because they were such, privileges granted to citizens of the State enacting it. Can a different principle apply, as between individual citizens of the several States, when the assets to be distributed are the assets of an insolvent private corporation lawfully engaged in business and having the

power to contract with citizens residing in States other than the one in which it is located?

It is an established rule of equity that when a corporation becomes insolvent it is so far civilly dead that its property may be administered as a trust fund for the benefit of its stockholders and creditors, (*Graham* v. *Railroad Co.*, 102 U. S. 148, 161) — not simply of stockholders and creditors residing in a particular State, but all stockholders and creditors of whatever State they may be citizens. In *Wabash, St. Louis &c. Railway Co.* v. *Ham*, 114 U. S. 587, 594, it was said that the property of a corporation was a trust fund for the payment of its debts, in the sense that when the corporation was lawfully dissolved and all its business wound up, or when it was insolvent, all its creditors were entitled in equity to have their debts paid out of the corporate property before any distribution thereof among the stockholders. In *Hollins* v. *Brierfield Coal & Iron Co.*, 150 U. S. 371, 385, it was observed that a private corporation, when it becomes insolvent, holds its assets subject to somewhat the same kind of equitable lien and trust in favor of its creditors that exists in favor of the creditors of a partnership after becoming insolvent, and that in such case a lien and trust will be enforced by a court of equity in favor of creditors. These principles obtain, no doubt, in Tennessee, and will be applied by its courts in all appropriate cases between citizens of that State, without making any distinction *between them.* Yet the courts of that State are forbidden, by the statute in question, to recognize the right in equity of citizens residing in other States to participate upon terms of equality with citizens of Tennessee in the distribution of the assets of an insolvent foreign corporation lawfully doing business in that State.

We hold such discrimination against citizens of other States to be repugnant to the second section of the Fourth Article of the Constitution of the United States, although, generally speaking, the State has the power to prescribe the conditions upon which foreign corporations may enter its territory for purposes of business. Such a power cannot be exerted with the effect of defeating or impairing rights secured to citizens

of the several States by the supreme law of the land. Indeed, all the powers possessed by a State must be exercised consistently with the privileges and immunities granted or protected by the Constitution of the United States.

In *Lafayette Ins. Co.* v. *French*, 18 How. 400, 407, Mr. Justice Curtis, speaking for this court, said: "A corporation created by Indiana can transact business in Ohio only with the consent, expressed or implied, of the latter State. This consent may be accompanied by such conditions as Ohio may think fit to impose; and these conditions must be deemed valid and effectual by other States and by this court, provided they are not repugnant to the Constitution and laws of the United States, or inconsistent with those rules of public law which secure the jurisdiction and authority of each State from encroachment by all others, or that principle of natural justice which forbids condemnation without opportunity for defence." It was accordingly adjudged in *Barron* v. *Burnside*, 121 U. S. 186, 200, that an Iowa statute requiring every foreign corporation named in it, as a condition of obtaining a license or permit to transact business in that State, to stipulate that it would not remove into the Federal courts suits that were removable from the state courts under the laws of the United States, was void because it made the right to do business under a license or permit dependent upon the surrender by the corporation of a privilege secured to it by the Constitution. This principle was recognized in *Barrow Steamship Co.* v. *Kane*, 170 U. S. 100, 111, in which, after referring to the constitutional and statutory provisions defining the jurisdiction of the Circuit Courts of the United States, this court said: "The jurisdiction so conferred upon the national courts cannot be abridged or impaired by any statute of a State. *Hyde* v. *Stone*, 20 How. 170, 175; *Smyth* v. *Ames*, 169 U. S. 466, 516. It has therefore been decided that a statute, which requires all actions against a county to be brought in a county court, does not prevent the Circuit Court of the United States from taking jurisdiction of such an action; Chief Justice Chase saying that 'no statute limitation of suability can defeat a jurisdiction given by the Constitution.' *Cowles* v. *Mercer*

County, 7 Wall. 118, 122; *Lincoln County* v. *Luning*, 133 U. S. 529; *Chicot County* v. *Sherwood*, 148 U. S. 529. So statutes requiring foreign corporations, as a condition of being permitted to do business within the State, to stipulate not to remove into the courts of the United States suits brought against them in the courts of the State, have been adjudged to be unconstitutional and void. *Home Ins. Co.* v. *Morse*, 20 Wall. 445; *Barron* v. *Burnside*, 121 U. S. 186; *Southern Pacific Co.* v. *Denton*, 146 U. S. 202." See *Ducat* v. *Chicago*, 10 Wall. 410, 415.

We must not be understood as saying that a citizen of one State is entitled to enjoy in another State *every* privilege that may be given in the latter to its own citizens. There are privileges that may be accorded by a State to its own people in which citizens of other States may not participate except in conformity to such reasonable regulations as may be established by the State. For instance, a State cannot forbid citizens of other States from suing in its courts, that right being enjoyed by its own people; but it may require a non-resident, although a citizen of another State, to give bond for costs, although such bond be not required of a resident. Such a regulation of the internal affairs of a State cannot reasonably be characterized as hostile to the fundamental rights of citizens of other States. So, a State may, by rule uniform in its operation as to citizens of the several States, require residence within its limits for a given time before a citizen of another State who becomes a resident thereof shall exercise the right of suffrage or become eligible to office. It has never been supposed that regulations of that character materially interfered with the enjoyment by citizens of each State of the privileges and immunities secured by the Constitution to citizens of the several States. The Constitution forbids only such legislation affecting citizens of the respective States as will substantially or practically put a citizen of one State in a condition of alienage when he is within or when he removes to another State, or when asserting in another State the rights that commonly appertain to those who are part of the political community known as the People of the United States, by and

for whom the Government of the Union was ordained and established.

Nor must we be understood as saying that a State may not, by its courts, retain within its limits the assets of a foreign corporation, in order that justice may be done to its own citizens; nor, by appropriate action of its judicial tribunals, see to it that its own citizens are not unjustly discriminated against by reason of the administration in other States of the assets there of an insolvent corporation doing business within its limits. For instance, if the Embreeville Company had property in Virginia at the time of its insolvency, the Tennessee court administering its assets in that State could take into account what a Virginia creditor, seeking to participate in the distribution of the company's assets in Tennessee, had received or would receive from the company's assets in Virginia, and make such order touching the assets of the company in Tennessee as would protect Tennessee creditors against wrongful discrimination arising from the particular action taken in Virginia for the benefit of creditors residing in that Commonwealth.

It may be appropriate to observe that the objections to the statute of Tennessee do not necessarily embrace enactments that are found in some of the States requiring foreign insurance corporations, as a condition of their coming into the State for purposes of business, to deposit with the state treasurer funds sufficient to secure policy holders in its midst. Legislation of that character does not present any question of discrimination against citizens forbidden by the Constitution. Insurance funds set apart in advance for the benefit of home policy holders of a foreign insurance company doing business in the State are a trust fund of a specific kind to be administered for the exclusive benefit of certain persons. Policy holders in other States know that those particular funds are segregated from the mass of property owned by the company, and that they cannot look to them to the prejudice of those for whose special benefit they were deposited. The present case is not one of that kind. The statute of Tennessee did not make it a condition of the right of the British corporation

to come into Tennessee for purposes of business that it should, at the outset, deposit with the State a fixed amount to stand exclusively or primarily for the protection of its Tennessee creditors. It allowed that corporation, after complying with the terms of the statute, to conduct its business in Tennessee as it saw fit, and did not attempt to impose any restriction upon its making contracts with or incurring liabilities to citizens of other States. It permitted that corporation to contract with citizens of other States, and then, in effect, provided that all such contracts should be subject to the condition (in case the corporation became insolvent) that creditors residing in other States should stand aside, in the distribution by the Tennessee courts of the assets of the corporation, until creditors residing in Tennessee were fully paid — not out of any funds or property specifically set aside as a trust fund, and at the outset put into the custody of the State, for the exclusive benefit, or for the benefit primarily, of Tennessee creditors, but — out of whatever assets of any kind the corporation might have in that State when insolvency occurred. In other words, so far as Tennessee legislation is concerned, while this corporation could lawfully have contracted with citizens of other States, those citizens cannot share in its general assets upon terms of equality with citizens of that State. If such legislation does not deny to citizens of other States, in respect of matters growing out of the ordinary transactions of business, privileges that are accorded to it by citizens of Tennessee, it is difficult to perceive what legislation would effect that result.

We adjudge that when the general property and assets of a private corporation, lawfully doing business in a State, are in course of administration by the courts of such State, creditors who are citizens of other States are entitled, under the Constitution of the United States, to stand upon the same plane with creditors of like class who are citizens of such State, and cannot be denied equality of right simply because they do not reside in that State, but are citizens residing in other States of the Union. The individual plaintiffs in error were entitled to contract with this British corporation, lawfully doing business in Tennessee, and deemed and taken to be a corporation

of that State; and no rule in the distribution of its assets among creditors could be applied to them as resident citizens of Ohio, and because they were not residents of Tennessee, that was not applied by the courts of Tennessee to creditors of like character who were citizens of Tennessee.

As to the plaintiff in error, the Hull Coal & Coke Company of Virginia, different considerations must govern our decision. It has long been settled that, for purposes of suit by or against it in the courts of the United States, the members of a corporation are to be conclusively presumed to be citizens of the State creating such corporation; *Louisville, Cincinnati & Charleston Railroad Co.* v. *Letson*, 2 How. 497; *Covington Drawbridge Co.* v. *Shepherd &c.*, 20 How. 227, 232; *Ohio & Miss. Railroad Co.* v. *Wheeler*, 1 Black, 286, 296; *Steamship Co.* v. *Tugman*, 106 U. S. 118, 120; *Barrow Steamship Co.* v. *Kane*, 170 U. S. 100; and therefore it has been said that a corporation is to be deemed, for such purposes, a citizen of the State under whose laws it was organized. But it is equally well settled, and we now hold, that a corporation is not a citizen within the meaning of the constitutional provision that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." *Paul* v. *Virginia*, 8 Wall. 168, 178, 179; *Ducat* v. *Chicago*, 10 Wall. 410, 415; *Liverpool Ins. Co.* v. *Massachusetts*, 10 Wall. 566, 573. The Virginia corporation, therefore, cannot invoke that provision for protection against the decree of the state court denying its right to participate upon terms of equality with Tennessee creditors in the distribution of the assets of the British corporation in the hands of the Tennessee court.

Since, however, a corporation is a "person" within the meaning of the Fourteenth Amendment, (*Santa Clara County* v. *Southern Pacific Railroad Co.*, 118 U. S. 394, 396; *Smyth* v. *Ames*, 169 U. S. 466, 522,) may not the Virginia corporation invoke for its protection the clause of the Amendment declaring that no State shall deprive any person of property without due process, nor deny to any person within its jurisdiction the equal protection of the laws?

We are of opinion that this question must receive a negative

answer. Although this court has adjudged that the prohibitions of the Fourteenth Amendment refer to all the instrumentalities of the State, to its legislative, executive and judicial authorities, (*Ex parte Virginia*, 100 U. S. 339, 346–347; *Yick Wo* v. *Hopkins*, 118 U. S. 356, 373; *Scott* v. *McNeal*, 154 U. S. 34, 45, and *Chicago, Burlington &c. Railroad* v. *Chicago*, 166 U. S. 226, 233,) it does not follow that, within the meaning of that Amendment, the judgment below deprived the Virginia corporation of property without due process of law, simply because its claim was subordinated to the claims of the Tennessee creditors. That corporation was not, in any legal sense, deprived of its claim, nor was its right to reach the assets of the British corporation in other States or countries disputed. It was only denied the right to participate upon terms of equality with Tennessee creditors in the distribution of particular assets of another corporation doing business in that State. It had notice of the proceedings in the state court, became a party to those proceedings, and the rights asserted by it were adjudicated. If the Virginia corporation cannot invoke the protection of the second section of Article IV of the Constitution of the United States relating to the privileges and immunities of citizens in the several States, as its co-plaintiffs in error have done, it is because it is not a citizen within the meaning of that section; and if the state court erred in its decree in reference to that corporation, the latter cannot be said to have been thereby *deprived* of its property without due process of law within the meaning of the Constitution.

It is equally clear that the Virginia corporation cannot rely upon the clause declaring that no State shall "deny to any person within its jurisdiction the equal protection of the laws." That prohibition manifestly relates only to the denial by the State of equal protection to persons "within its jurisdiction." Observe, that the prohibition against the deprivation of property without due process of law is not qualified by the words "within its jurisdiction," while those words are found in the succeeding clause relating to the equal protection of the laws. The court cannot assume that those words were inserted

without any object, nor is it at liberty to eliminate them from the Constitution and to interpret the clause in question as if they were not to be found in that instrument. Without attempting to state what is the full import of the words, "within its jurisdiction," it is safe to say that a corporation not created by Tennessee, nor doing business there under conditions that subjected it to process issuing from the courts of Tennessee at the instance of suitors, is not, under the above clause of the Fourteenth Amendment, within the jurisdiction of that State. Certainly, when the statute in question was enacted the Virginia corporation was not within the jurisdiction of Tennessee. So far as the record discloses, its claim against the Embreeville Company was on account of coke sold and shipped from Virginia to the latter corporation at its place of business in Tennessee. It does not appear to have been doing business in Tennessee under the statute here involved, or under any statute that would bring it directly under the jurisdiction of the courts of Tennessee by service of process on its officers or agents. Nor do we think it came within the jurisdiction of Tennessee, within the meaning of the Amendment, simply by presenting its claim in the state court and thereby becoming a party to this cause. Under any other interpretation the Fourteenth Amendment would be given a scope not contemplated by its framers or by the People, nor justified by its language. We adjudge that the statute, so far as it subordinates the claims of private business corporations not within the jurisdiction of the State of Tennessee, (although such private corporations may be creditors of a corporation doing business in the State under the authority of that statute,) to the claims against the latter corporation of creditors residing in Tennessee, is not a denial of the "equal protection of the laws" secured by the Fourteenth Amendment to persons within the jurisdiction of the State, however unjust such a regulation may be deemed.

What may be the effect of the judgment of this court in the present case upon the rights of creditors not residing in the United States, it is not necessary to decide. Those creditors are not before the court on this writ of error.

The final judgment of the Supreme Court of Tennessee must be affirmed as to the Hull Coal & Coke Company, because it did not deny to that corporation any right, privilege or immunity secured to it by the Constitution of the United States. (*Rev. Stat.* § 709.) *As to the other plaintiffs in error, citizens of Ohio, the judgment must be reversed, and the cause remanded for further proceedings not inconsistent with this opinion; and it is so ordered.*

MR. JUSTICE BREWER, with whom MR. CHIEF JUSTICE FULLER concurred, dissenting.

I am unable to concur in the opinion of the court in this case. In my judgment it misconceives the language of the statute, the issues presented by the pleadings, and the decision of the state court. The act does not discriminate between citizens of Tennessee and those of other States. Its language is creditors "residents of this State shall have a priority . . . over all simple contract creditors being residents of any other country or countries." The allegation of the amended bill is, "your orators are all residents of the State of Tennessee and were such at the time the various debts sued on in this cause were created," and that by virtue of the statute they are entitled to priority over the "defendant, Rogers, Brown & Co., and all other creditors of said insolvent corporation who do not reside in the State of Tennessee, or did not so reside at the time their credits were given." The intervening petition of the plaintiffs in error, Blake and Rogers, Brown & Co., alleges "that they are residents of the State of Ohio, and were at the times and dates hereinafter named engaged in business in said State, their residences, offices and places of business being at the city of Cincinnati." The decree of the Chancery Court of Appeals adjudges "that all of the creditors of said company who resided in the State of Tennessee are entitled to priority of payment out of all of the assets of the company of every kind over all of the creditors of said company who do not reside in the State of Tennessee." And the decree of the Supreme Court of the State is in substantially the

same language, adjudging "that all of the creditors of the Embreeville Freehold Land, Iron and Railway Company, Limited, who reside in the State of Tennessee, are entitled to priority of payment out of all of the assets of said company, both real and personal, over all of the other creditors of said company who do not reside in the State of Tennessee, whether they be residents of other States of the United States or of the Kingdom of Great Britain." So that neither the statute, the pleadings nor the decree raise any question of citizenship, or give any priority of right to the citizens of Tennessee over citizens of other States, but only discriminate between residents, and give residents of the State a priority. I think it improper to go outside of a case to find a question which is not in the record simply because it may be discussed by counsel for one party, who apparently decline to recognize any difference between residence and citizenship. For all this record discloses, the plaintiffs in error other than the corporation may have been citizens of the State of Tennessee, temporarily residing and doing business in Ohio, and the controversy one simply between citizens of the same State. It is not necessary in this court to refer to the difference between residence and citizenship. Neither is synonymous with the other, and neither includes the other. A British subject or a citizen of Ohio may be a resident of Tennessee, and entitled to the benefit of this statute. A citizen of Tennessee may, like these plaintiffs in error, be a resident of and doing business in Ohio and not entitled to its benefit. It will be time enough to consider the question discussed in the opinion when it appears that a State has attempted to discriminate between its own citizens and citizens of other States, and the courts of the State have affirmed the validity of such discrimination.

Taking the statute as it reads, and assuming that the legislature of Tennessee meant that which it said, the question is whether a State, permitting a foreign corporation which is not engaged in interstate commerce to come into its territory and there do business, has the power to protect all persons residing within its limits who may have dealings with such foreign corporation by requiring it to give them a prior security on its

assets within the State. The principle underlying this statute is that a State, which can have no jurisdiction beyond its territorial limits, has the power in reference to foreign corporations permitted to do business therein to protect all persons within those limits, whether citizens or not, in respect to claims upon the property thereof also within those limits. That a State may keep such a corporation out of its territory is conceded; and that, in permitting it to enter, the State may impose such conditions as it sees fit, is, as a general proposition, also admitted. In *Crutcher* v. *Kentucky*, 141 U. S. 47, 59, it was said:

"The insurance business, for example, cannot be carried on in a State by a foreign corporation without complying with all the conditions imposed by the legislation of that State. So with regard to manufacturing corporations, and all other corporations whose business is of a local and domestic nature, which would include express companies whose business is confined to points and places wholly within the State. The cases to this effect are numerous. *Bank of Augusta* v. *Earle*, 13 Pet. 519; *Paul* v. *Virginia*, 8 Wall. 168; *Liverpool Insurance Company* v. *Massachusetts*, 10 Wall. 566; *Cooper Manufacturing Company* v. *Ferguson*, 113 U. S. 727; *Phila. Fire Association* v. *New York*, 119 U. S. 110."

Every one dealing with a foreign corporation is bound to take notice of the statutes of the State imposing conditions upon that corporation in respect to the transaction of its business within the State, just as he must take notice of any mortgage or other incumbrance placed by the corporation upon its property there situated. A State may and often does provide that persons furnishing supplies to and doing work for a corporation shall have a lien upon the property of that corporation prior to any mortgage. The validity of such legislation has always been sustained, and they who loan their money to the corporation do so with notice of the limitation, and have no constitutional right of complaint if their mortgage is thereafter postponed to simple contract obligations. If voluntarily the corporation placed a mortgage upon all its assets within the State to secure a debt to a single creditor residing within

the State, and such mortgage was duly recorded, no one would have the hardihood to say that a resident or citizen of another State could challenge its validity or its priority over his unsecured debt simply because he was a citizen of another State, or did not, in fact, know of its existence. And that which is true in case of a mortgage to a single creditor would be equally true in case such foreign corporation placed a mortgage upon its assets to secure every creditor within the State. The number of creditors secured does not change the validity of the security or affect the matter of notice or relieve the foreign creditor from the consequences of notice. If the corporation may voluntarily place a mortgage upon all its assets within the State to secure its creditors within the State, why may not the legislature require as a condition of its doing business that it give such a mortgage? Is the corporation more powerful than the State? Is a voluntarily executed mortgage more valid than a statute? If, in fact, in pursuance of such a statute a mortgage to each separate creditor was given and recorded as fast as the corporation came under obligation to him, could a non-resident creditor question the validity of the mortgage or the priority given thereby? And is the effect of the statute in controversy anything other than the imposition upon the assets of the corporation within the State of a single mortgage in favor of home creditors? If written out and recorded, who could question its validity or its priority? The statute in its spirit and effect does nothing more. That it is prospective in its operation is immaterial — statutes generally are. The validity of an after-acquired property clause in a mortgage has become settled; none the less valid is it in a statute.

It is conceded, in the opinion of the court, that a foreign insurance corporation might be required to make a special deposit with the state treasurer to secure local policy holders, but if it is within the constitutional power of the State to require such special deposit, and when made it becomes in fact a security to the home policy holders, I am unable to appreciate why the State may not require a general mortgage on all the assets within the State as like security. Looking at it

simply as a question of power on the part of the State, what difference can there be between a pledge of a special fund and a mortgage of the entire fund within the State? And that which is true in respect to an insurance corporation must also be true of any other corporation not engaged in interstate commerce business.

Indeed, aside from the demand made by the statutes of certain States of deposits by foreign corporations to secure home creditors, there are frequent illustrations of discrimination based upon the matter of residence. Often non-resident plaintiffs are required to give security for costs when none is demanded of resident suitors. Attachments will lie in the beginning of an action, authorizing the seizure of property upon the ground that the defendant is a non-resident, when no such seizure is permitted in case of resident defendants. These and many similar illustrations, which might be suggested, only disclose that it has been accepted as a general truth that a State may discriminate on the ground of residence, and that such discrimination is not to be condemned as one between citizens; and yet if the doctrine of the opinion of the court in this case be correct, I cannot see how those statutes can be sustained, for surely they discriminate between non-resident and resident suitors in the matter of fundamental rights, to wit, the right of equal entrance into the courts and equal security in the possession of property.

It may not be uninteresting to notice the case of *Fritts* v. *Palmer*, 132 U. S. 282. That case came from Colorado. The statutes of that State, as quoted in the opinion of the court, provided, among other things —

"SEC. 260. Foreign corporations shall, before they are authorized or permitted to do any business in this State, make and file a certificate signed by the president and secretary of such corporation, duly acknowledged, with the secretary of State, . . . and no corporation doing business in the State, incorporated under the laws of any other State, shall be permitted to mortgage, pledge or otherwise incumber its real or personal property situated in this State, to the injury or exclusion of any citizen, citizens or corporations of this State

who are creditors of such foreign corporation, and no mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other State, shall take effect as against any citizen or corporation of this State until all its liabilities due to any person or corporation in this State at the time of recording such mortgage have been paid and extinguished."

Commenting upon this section, and others, this court said (p. 288):

"No question is made in this case — indeed, there can be no doubt — as to the validity of these constitutional and statutory provisions, so far, at least, as they do not directly affect foreign or interstate commerce. In *Cooper Manufacturing Co.* v. *Ferguson*, 113 U. S. 727, 732, this court said that 'the right of the people of a State to prescribe generally by its constitution and laws the terms upon which a foreign corporation shall be allowed to carry on its business in the State, has been settled by this court.'"

It will be perceived that the statute of Colorado restrained a foreign corporation from mortgaging, pledging or otherwise incumbering its property situate in the State to the injury or exclusion of any citizen of the State, creditor of such corporation, and further provided that no mortgage given by such foreign corporation to secure a debt created in another State should take effect against any citizen of the State until all liabilities due to any person or corporation in the State had been paid and extinguished. But this court said, and I think correctly, that there could be no doubt of the validity of these statutory provisions. It may be said, and said truthfully, that the attention of the court was not specially directed to this particular portion of the statute, and hence that the decision cannot be taken as authority. Yet the section was spread before the court, it is quoted in its opinion, and it was so obviously constitutional that neither counsel nor court had any doubt thereof. I note this case in order to suggest the objectionable evolution of the thought that a State may not protect those persons who are within its jurisdiction in respect to property also within its jurisdiction, or impose conditions on

foreign corporations doing business therein, which amount to such protection. Ten years ago a statute of Colorado guaranteeing priority to citizens of the State over all other creditors, even those by mortgage, was by all parties, counsel and by court, conceded to be free from objection, while to-day a statute of Tennessee, in no way discriminating between citizens, but only between residents and in respect to foreign corporations, is declared to be so plainly at variance with the Constitution of the United States that it must be adjudged void.

The doctrine of this opinion is that a State has no power to secure protection to persons within its jurisdiction, citizens or non-citizens, in respect to property also within its jurisdiction, because, forsooth, such protection may in some cases work to the disadvantage of one who is not only a non-resident but also not a citizen of the State. It seems to me that the practical working out of this doctrine will be not that the State may not discriminate in favor of its own residents as against non-residents, but that the State must discriminate in favor of non-residents and against its own residents. Take this illustration: A corporation organized and having its home office in New York comes into California to do business. The State of California attempts to require that its assets within the State shall be kept as a primary security for home creditors. This court declares that such requisition is unconstitutional. The solvency or insolvency of that New York corporation will be known in New York by those who are nearer to its home office sooner than by people in California. Insolvency is impending. The creditors in New York, near the home office, and familiar therefore with its exact condition, ascertaining its approaching insolvency, send to California, where there are assets, and, availing themselves of the ordinary statutory provisions of that State, seize by attachment all the assets there situated. The insolvency is thereafter made public, and the California creditors find that all the assets of the corporation within their State have been seized by creditors outside the State, and they are driven to the State of New York, where the corporation was organized, where its home

office and home assets are, to see what share in the unappropriated assets they can obtain, while the New York creditors, by reason of their early information, secure full payment. Practically, the effect is to compel the State to discriminate in favor of the New York against the home creditors. The suggestion that after the New York creditors have perfected their liens upon the assets in California, the courts of that State will stay proceedings until they see that the New York courts have given full protection to the California creditors in the assets in New York, is visionary and impracticable. There may be assets in twenty States, and there is no control by the courts of one State over proceedings in the courts of other States. Of course, if the California courts can wait till the New York courts have acted, the converse is also true, and so a game of seesaw may be established between the courts of the two States. For these, among other reasons, I am constrained to dissent from this opinion and judgment.

I am authorized to state that the Chief Justice concurs in this dissent.